

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERTA A KISTLER
Claimant

APPEAL NO. 08A-UI-06244-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/18/08 R: 03
Claimant: Appellant (4)**

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Roberta A. Kistler (claimant) appealed a representative's July 7, 2008 decision (reference 03) that concluded she had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on July 22, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-06243-DT. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision reversing the representative's decision.

ISSUE:

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

A representative issued a decision dated July 3, 2008 (reference 02) that concluded the claimant was disqualified from receiving benefits due to a conclusion she was not able and available for work. The claimant timely appealed that decision and in the concurrently issued decision in appeal 08A-UI-06243-DT, that decision has been reversed.

The overpayment decision was issued in this case as a result of the July 3, 2008 (reference 02) disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$738.00.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

The administrative law judge concludes that the claimant is not overpaid benefits due to the disqualification decision issued on July 3, 2008 (reference 02), which has now been reversed. However, as the decision in 08A-UI-06243-DT contained a remand for a determination on another potentially disqualifying issue, it is possible that should a disqualification be reimposed, a new determination might also be made that the claimant was overpaid due to the new disqualification.

DECISION:

The representative's July 7, 2008 decision (reference 03) is modified in favor of the claimant. The claimant is not overpaid benefits due to not being able and available for work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css