

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHAWNTELLE M MOORE
PO BOX 733
TRIPOLI IA 50676-0733

ECHOVISIONS INC
104 JACKSON ST
SUMNER IA 50674-1642

Appeal Number: 06A-UI-07120-DT
OC: 05/28/06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Shawntelle M. Moore (claimant) appealed a representative's July 10, 2006 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 scheduled for August 2, 2006 in conjunction with one related appeal, 06A-UI-07119-DT on the underlying separation decision. The claimant declined to participate in the combined hearing with the employer on the separation decision, and agreed that the administrative law judge should make a decision based upon a review of the information in the administrative file. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

A representative issued a decision dated July 5, 2006 (reference 01) that concluded the claimant was disqualified from receiving benefits after a separation from employment from Echovisions (employer). The overpayment decision was issued in this case as a result of that disqualification decision. As determined in the concurrently issued decision in appeal 06A-UI-07119-DT, that disqualification decision has now been affirmed.

The claimant established a claim for unemployment insurance benefits effective May 28, 2006 after a June 1, 2006 separation from employment. Her weekly benefit amount was calculated to be \$235.00. She received payment of her gross weekly benefit amount for each of the weeks ending June 10, June 17, and June 24, 2006, paid on June 15, June 20, and June 26, 2006, respectively, for a gross amount of \$705.00. A prior representative's decision issued on June 30, 2006 (reference 02), which has not been challenged, concluded that \$119.00 of this was overpaid for the week ending June 10, 2006 as a result of a failure to properly report vacation pay or other compensation. The representative's decision which concluded that the separation was disqualifying was not issued until July 5, 2006, then resulting in the issuance of the overpayment decision in this case for the remaining \$586.00 of the benefits paid.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$586.00. The claimant's primary argument is that she should not be required to repay benefits paid to her prior to the issuance of the separation decision as they should not have been paid to her if she was not eligible.

871 IAC 24.2(2)(b) provides in pertinent part:

- b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitation.

Iowa Code § 96.3-7 provides in pertinent part:

- 7. Recovery of overpayment of benefits. 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.

[Emphasis added.]

Public policy dictates that unless there has been at least a preliminary assessment that a claimant's separation from employment is disqualifying, as a person who is unemployed presumably (prior to the decision) through no fault of her own, she should be provided with the benefits necessary to lighten the economic burden of having no income as soon as possible

after the filing of the claim. Iowa Code § 96.2. The due process of providing notice to the employer of the claim, allowing the employer to respond, and providing proper notice to the parties of the fact-finding interview necessary to make an initial determination requires several weeks at a minimum after the filing of the claim. Iowa Code § 96.6; 871 IAC 24.19. It would be contrary to the public purpose upon which the unemployment insurance system was created if payment of benefits was generally withheld until after a proper initial determination regarding the separation was made.

Here, the claimant chose not to pursue an appeal of the decision that caused the overpayment in this case. If the claimant had a dispute with whether or not she should have been disqualified as a result of the separation from the employer, then she needed to pursue an appeal to that decision. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979). The decision causing the disqualification has now been affirmed. The administrative law judge concludes that the claimant is overpaid benefits of \$586.00 (plus the prior overpayment of \$119.00, for a total of \$705.00) pursuant to Iowa Code § 96.3-7 due to the disqualification decision issued on July 5, 2006. Even though those benefits were received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 10, 2006 decision (reference 01) is affirmed. The claimant is overpaid benefits of \$586.00 (plus the prior amount of \$119.00, for a total overpayment of \$705.00).

ld/pjs