

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE CORDERO-ROSARIO
Claimant

APPEAL NO. 08A-UI-06124-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

METROGROUP MARKETING SERVICES
Employer

OC: 05-18-08 R: 03
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Benefit Overpayment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 30, 2008, reference 01, decision that determined she was overpaid benefits in the amount of \$93.00. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 21, 2008. The claimant participated in the hearing with Interpreter Ike Rocha.

ISSUE:

The issue is whether the claimant is overpaid unemployment insurance benefits and whether she is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by the claimant's failure to report wages in the amount of \$154.00 for the week ending May 24, 2008.

The claimant testified she is able and available for work and has been actively and earnestly seeking work since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7 provides:

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.

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.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$93.00 pursuant to Iowa Code section 96.3-7 as she failed to report wages for the week ending May 24, 2008.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes the claimant is able and available for work. There has been no evidence presented that she is not able and available for work and the claimant testified she is actively and earnestly seeking work.

DECISION:

The June 30, 2008, reference 01, decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$93.00. She is able and available for work.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css