

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA A MESSERSCHMIDT
Claimant

APPEAL NO. 11A-UI-05227-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/22/09
Claimant: Appellant (2)

Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Laura Messerschmidt filed a timely appeal from the April 13, 2011, reference 04, decision that she was overpaid \$5,250.00 in benefits for the period of December 26, 2010 through April 11, 2011. After due notice was issued, a hearing was started on held on May 16, 2011 and concluded on May 27, 2011. Ms. Messerschmidt participated. The conclusion of the hearing was postponed to May 27, 2011 to give Ms. Messerschmidt an opportunity to submit medical documentation. Exhibits A and B were received into the record on May 27, 2011. The administrative law judge took official notice of the Agency's administrative record (DBRO) of wages reported for the claimant and benefits disbursed to the claimant. The hearing in this matter was consolidated with the hearing in Appeal Numbers 11A-UI-05224, 05225, and 05226-JTT.

ISSUE:

Whether Ms. Messerschmidt was overpaid \$5,250.00 in benefits for the period of December 26, 2010 through April 11, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laura Messerschmidt established a claim for unemployment insurance benefits that was effective March 2, 2009 and received benefits. The claim was established in response to Ms. Messerschmidt's March 23, 2009 separation from employment with Black Hawk County. Ms. Messerschmidt received regular unemployment insurance benefits for the period of March 22, 2009 through October 3, 2009. Thereafter, Ms. Messerschmidt received emergency unemployment compensation benefits from October 4, 2009 through March 20, 2010, when the benefit claim year expired.

Ms. Messerschmidt established a new claim for benefits in a new claim year. That claim was effective March 21, 2010. Ms. Messerschmidt received regular benefits for the week ending March 27, 2010 and for the period of April 18, 2010 through July 3, 2010, at which time regular benefits were exhausted. Ms. Messerschmidt then received emergency unemployment

compensation benefits for the period of July 4, 2010 through December 25, 2010. The regular benefits Ms. Schmidt received for the period of October 24, 2010 through December 25, 2010 totaled \$1,566.00. For that same period, Ms. Messerschmidt received an additional \$175.00 in federal stimulus unemployment insurance benefits. These were disbursed at a rate of \$25.00 per week. Ms. Messerschmidt's eligibility for the federal stimulus benefits was contingent upon her being eligible for the emergency unemployment compensation benefits. The total amount disbursed to Ms. Messerschmidt for the period of October 24, 2010 through December 25, 2010 was \$1,741.00.

Ms. Messerschmidt then established an additional claim for emergency unemployment insurance benefits, based on the March 22, 2009, original claim date. The new claim for emergency benefits was effective December 26, 2010. For the period of December 26, 2010 through April 2, 2011, Ms. Messerschmidt received emergency compensation benefits totaling \$5,250.00.

Ms. Messerschmidt was employed at Casey's on a part-time basis for just a few days in September 2010 before she voluntarily quit on September 18, 2010, ostensibly because the work was not interesting to her. Prior to that, Ms. Messerschmidt worked part-time for a very short period at Windsor Health Care in Cedar Falls before she left that employment because she disliked the hours and because she wanted to be available to assist with the care of her six-month-old grandchild, who was residing with Ms. Messerschmidt. Workforce Development records indicate there was one other brief employment during the third quarter of 2010. Ms. Messerschmidt reported \$200.00 in wages for the week that ended September 18, 2010, \$400.00 in wages for the week that ended September 25, 2010, and \$90.00 in wages for the week that ended October 23, 2010. This last week of reported wages was from about a month *after* Ms. Messerschmidt separated from Casey's, supporting the notion that there was additional very brief employment.

On April 11, 2011, a Workforce Development representative entered a reference 03 decision that denied benefits effective December 26, 2010 based on an Agency conclusion that Ms. Messerschmidt was unable to perform work due to illness.

Ms. Messerschmidt has provided a signed memo from Dr. Rick McCormick, D.O., of Medical Associates of Independence, L.L.C. The note is dated May 19, 2011. The signed memo indicates that Ms. Messerschmidt is a patient, that she is diagnosed with irritable bowel syndrome (IBS) and anxiety and depression secondary to the IBS diagnosis. The memo indicates that Ms. Messerschmidt "has had no restrictions to prevent her working from September 2010 to the present date. Laura remains to be physically and mentally capable of working." Submitted with the memo are patient notes dated September 29, 2010; November 12, 2010; January 12, 2011; January 21, 2011; and February 3, 2011. The September 29, 2010 note references worsening IBS symptoms along with a related increase in depression. The note indicates: "Laura is a 49 year-old who presents today with worsening issues with her IBS and feeling more depressed because she is having some difficulty staying at work." Dr. McCormick prescribed Amitriptyline in the hope that it would help with both issues. There is an additional hand-written entry in the dated notes. It is dated October 27, 2010. It indicates that the physician had faxed clinic notes from "11/07 to present" for consideration in connection with a disability claim.

Ms. Messerschmidt became a patient of Peoples Community Health Clinic in Waterloo in February 2011 and sought treatment from the facility on February 8, 2011. Ms. Messerschmidt has submitted a signed note dated May 17, 2011, on a prescription pad. The note is signed by Carrie Berry, A.R.N.P. The note states simply: "Patient able to work." Ms. Berry's notes from

the February 8, 2011 visit indicate the following diagnoses: diabetes (diet controlled), hypertension, irritable bowel syndrome, anxiety, weight gain, left upper abdominal mass. The notes indicate the following as the plan of treatment: General Surgery referral to Iowa City for left upper abdominal mass, refill Bystolic, fasting tabs to include hemoglobin ALC, CMP and a lipid profile, a mammogram referral, and weight loss.

The April 11, 2011, reference 03, disqualification decision that prompted the overpayment decision has been reversed on appeal. See 11A-UI-05226-JTT.

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.

Because the disqualification decision that prompted the overpayment decision has been reversed on appeal, the administrative law judge concludes that Ms. Messerschmidt was not overpaid \$5,250.00 in benefits for the period of December 26, 2010 through April 11, 2011.

DECISION:

The Agency representative's April 13, 2011, reference 04, decision is reversed. The claimant was not overpaid \$5,250.00 in benefits for the period of December 26, 2010 through April 11, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw