

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHLEEN S SECOR**  
Claimant

**APPEAL NO. 12A-EUCU-00206-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 09-11-11  
Claimant: Appellant (1-R)**

Section 96.3-7 – Recovery of Overpayment of Benefits  
871 IAC 24.50(7) – Waiver

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated August 3, 2012, reference 04, that found the claimant overpaid emergency unemployment compensation benefits (EUCU) in the amount of \$7,900.42. A telephone hearing was held on September 6, 2012. The claimant participated in the hearing.

**ISSUE:**

Was the claimant was overpaid EUCU benefits and, if so, can those benefits can be waived?

**FINDINGS OF FACT:**

The claimant filed a claim for EUCU benefits with an effective date of September 11, 2011. The claimant filed for and received a total of \$7900.42 in EUCU benefits for the 20 weeks ending July 21, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The EUCU program was created by Congress in Public Law 110-252, Title VI. This extended unemployment compensation program provides additional weeks of benefits to certain workers who have exhausted their rights to regular unemployment compensation benefits. This program was extended several times throughout 2012, allowing some workers additional benefits.

Generally, the unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7.

871 IAC 24.50(7) provides:

Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of

such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

In 2012 the agency determined that the waiver provision previously used to waive TEUC benefits erroneously paid to claimants could be used to waive EUCU benefits erroneously paid to claimants, so long as the claimant met the criteria set out in the administrative code section above. No determination has been made as to whether the overpayment of EUCU benefits in this case should be waived pursuant to the above Iowa Administrative Code section. In *Sievertsen v. EAB*, 483 N.W.2d 818 (1992), the Iowa Supreme court held that general principles of estoppels could not be used to force the agency to waive erroneous overpayment of benefits. Since the ruling in *Sievertsen*, the agency has adopted specific waiver provisions. Thus, while *Sievertsen* is still good law in Iowa, it is inapplicable in this case where a specific waiver provision applies.

**DECISION:**

The unemployment insurance decision dated August 3, 2012, reference 04, is affirmed. The claimant has been overpaid unemployment insurance benefits, but those benefits may be subject to waiver.

**REMAND:**

The issue as to whether the claimant is eligible for a waiver of EUCU benefits paid to her is remanded to the UISC Division. UISC will hold a fact-finding interview allowing the claimant to present evidence as to whether waiver of the overpayment should be granted. UISC shall issue a decision either granting or denying waiver, which the claimant may appeal.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw