

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEREDITH R NICHOLSON
Claimant

APPEAL NO: 09A-UI-17301-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/01/09
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits
Section 96.3-7-b – Waiver of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed a representative's October 30, 2009 decision (reference 03) that held he had been overpaid \$4,065.00 in benefits he received from April 26 through August 8, 2009. This overpayment occurred as the result of an administrative law judge's April 23, 2009 decision and the Department's error in paying benefits to the claimant after he had been disqualified from receiving benefits. A telephone hearing was held on the overpayment issue on December 17, 2009. 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.

ISSUES:

Has the claimant been overpaid \$4,065.00 in benefits he received for the weeks ending May 2 through August 8, 2009?

Is the claimant eligible for a waiver of the overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 1, 2009. The claimant and employer participated in the fact-finding interview. After the fact-finding interview, a representative issued a decision that held the claimant qualified to receive benefits. The employer appealed this decision.

As a result of the employer's appeal, an administrative law judge then conducted a hearing and issued an April 23 decision that disqualified the claimant from receiving benefits as of March 1, 2009. See decision for appeal 09A-UI-04854-HT. The claimant appealed this disqualifying decision to the Employment Appeal Board. On May 29, 2009, the Employment Appeal Board affirmed the administrative law judge's decision that disqualified the claimant from receiving benefits as of May 1, 2009.

The claimant filed for and received benefits for the weeks ending May 2 through August 8, 2009. He received his maximum weekly benefits of \$246.00 for each of these weeks. He received an additional \$25.00 each week from the government's economic stimulus program.

REASONING AND CONCLUSIONS OF LAW:

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7-b.

Based on the decision for appeal 09A-UI-04854-HT, the claimant has received benefits that he is not legally entitled to receive. He has been overpaid a total of \$4,065.00 in benefits he received for the weeks ending May 2 through August 8, 2009. Since the overpayment occurred as the result of an administrative law judge reversing a representative's decision and a Departmental error, the claimant is not at fault in receiving the overpayment. The overpayment, however, cannot be waived because the employer participated at the fact-finding interview.

DECISION:

The representative's October 30, 2009 design (reference 03) is affirmed. Based on an administrative law judge's April 23, 2009 decision, the claimant is not legally entitled to receive benefits for the weeks ending May 2 through August 8, 2009. He has been overpaid and must repay \$4,065.00 in benefits he received for these weeks. The claimant is not eligible for a waiver of this overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css