

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEDEJSIA E CAPLES
Claimant

APPEAL NO: 13A-UI-02030-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/25/11
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Overpayment/Waiver of Overpayment

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 15, 2013 determination (reference 05) that held her overpaid \$1,071.00 in benefits she received for the weeks ending October 1 through November 26, 2011. The overpayment occurred as the result of an administrative law judge's December 2, 2011 decision that reversed a determination that had held her eligible to receive benefits. The claimant participated at the hearing. Based on the evidence, the administrative file, the claimant's arguments, and the law, the administrative law judge concludes the claimant has been overpaid \$1,071.00 in benefits and is required to pay back this amount.

ISSUES:

Has the claimant been overpaid \$1,071.00 in benefits?

Is the claimant eligible for a waiver of the overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of September 25, 2011. She filed claims for the weeks ending October 1 through November 26, 2011. She received her maximum weekly benefit amount of \$119.00 for each of these weeks.

On October 25, 2011, a claims specialist contacted the claimant and asked why her employment ended. A TALX representative talked to the claims specialist. TALX also sent in warnings that the claimant had not signed and a statement from a person who observed the incident that led to the claimant's discharge. Based on the information provided by the employer's representative and the claimant, an October 26, 2011 determination (reference 02) held the claimant qualified to receive benefits. The employer appealed this determination.

When a hearing was held before an administrative law judge, the claimant was not available when she was called for the hearing. Based on information the employer presented at the hearing, an administrative law judge reversed the October 26, 2011 determination and

concluded the claimant was not qualified to receive benefits. See decision for appeal 11A-UI-14515-MT. When the claimant called to participate at the hearing, she was told it was too late. The claimant did not appeal the administrative law judge's decision.

REASONING AND CONCLUSIONS OF LAW:

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. 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.

In this case, the initial determination held the claimant qualified to receive benefits. Later, an administrative law judge reversed the initial determination and held the claimant was not qualified to receive benefits. Based on the decision for 11A-UI-14515-MT, the claimant has been overpaid \$1,071.00 in benefits she received for the weeks ending October 1 through November 26, 2011. The claimant is **not** at fault in receiving the overpayment.

The TALX representative, who participated at the hearing, did not have first-hand information about the reasons for the claimant's employment separation. But the employer also provided the statement of a person who witnessed the incident that led to the claimant's discharge. The employer provided enough meaningful information to establish the employer participated at the initial proceeding. As a result, the claimant is not eligible for a waiver of the overpayment and is required to repay \$1,071.00 to the Department.

DECISION:

The representative's February 15, 2013 determination (reference 05) is affirmed. Based on the decision for appeal 11A-UI-14515-MT, the claimant is not legally entitled to receive benefits as of September 25, 2011. She has been overpaid \$1,071.00 in benefits she received for the weeks ending October 1 through November 26, 2011. The claimant is not at fault in receiving the overpayment, but is still legally required to pay back benefits she was not legally entitled to receive.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs