

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS L RICH**  
Claimant

**APPEAL NO: 13A-UI-09952-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/07/13**  
**Claimant: Appellant (4)**

Section 96.3-7 - Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Thomas Rich (claimant) appealed a representative's June 24, 2013, decision (reference 02) that concluded he had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled to be held on September 28, 2013. The claimant participated personally. Exhibit D-1 was received into evidence.

**ISSUE:**

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

A representative issued a decision dated April 24, 2013, (reference 01) that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from Wadsworth Old Chicago (employer). The employer timely appealed that decision. A hearing was held with an administrative law judge that issued a decision in appeal 13A-UI-05302-ST reversing the representative's decision and finding the claimant ineligible for benefits due to the separation. The administrative law judge's decision included a remand to the Agency Claims Section for determination of an overpayment. The claimant did not appeal the administrative law judge's June 7, 2013, decision.

In issuing the initial representative's decision on April 24, 2013, there had been a fact-finding interview scheduled and held on April 23, 2013. The employer did not directly participate in that fact-finding interview; the claims representative called the number previously provided by the employer, but was placed on hold for three minutes with no answer. A review of the information from the fact-finding file indicates that the employer had submitted several pages of documents in advance of the fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is overpaid benefits of \$2,376.00, received prior to the disqualification imposed on appeal in 13A-UI-05302-ST.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment.

**DECISION:**

The representative's June 24, 2013, decision (reference 02) is modified in favor of the appellant. The claimant was overpaid unemployment insurance benefits due to a disqualifying separation from employment, and recovery of that overpayment is waived due to failure of the employer to meaningfully participate in the fact finding interview.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css