

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY P HICKS
Claimant

APPEAL NO: 10A-UI-09010-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/15/09
Claimant: Appellant (4)**

Section 96.3-7-b – Waiver of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a representative's June 15, 2010 decision (reference 02) that held he had been overpaid \$6,355.50 in benefits he received for the weeks ending November 21, 2009, through May 8, 2010. A telephone hearing was held on August 9, 2010. 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 \$6,355.50 in benefits he received for the weeks ending November 21, 2009, through May 8, 2010?

Is the claimant eligible for a waiver of the overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 15, 2009. The claimant participated in a fact-finding interview. He provided documents to the fact finder to explain his employment separation. The claimant did not provide any inaccurate information to the fact finder. A TALX representative appeared on the employer's behalf, but was not on the telephone the same time as the claimant. The TALX representative provided general information, but did not provide information about the incident that led to the claimant's separation. Based on the information presented by the claimant and employer, the fact finder issued a decision on January 5, 2010 that held the claimant qualified to receive benefits.

The employer appealed the representative's January 5, 2010 decision. A hearing was held before an administrative law judge on March 29, 2010. On May 12, 2010, the administrative law judge reversed the decision and disqualified the claimant from receiving benefits as of November 15, 2009. The claimant appealed the May 12, 2010 decision to the Employment Appeal Board. The Employment Appeal Board affirmed the May 12, 2010 decision.

The claimant filed claims for the weeks ending November 21, 2009, through May 8, 2010. He received a total of \$6,355.50 in regular and Emergency Compensation benefits and money from the government's economic stimulus for these weeks.

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. 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 section 96.3-7-b.

The regulations define participation as submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute. 871 IAC 24.10(1).

Based on the administrative law judge's May 12, 2010 decision, which the Employment Appeal Board affirmed, the claimant is not legally entitled to receive benefits as of November 15, 2009. This means he has been overpaid a total of \$6,355.50 in benefits he received from November 15, 2009, through May 8, 2010.

The overpayment is waived because the claimant accurately described the reasons for his employment separation and the employer did not participate in the fact-finding interview as participation is defined in Iowa's regulations.

DECISION:

The representative's June 15, 2010 decision (reference 02) is modified in the claimant's favor. Based on the administrative law judge's May 12, 2010 decision that the Employment Appeal Board affirmed, the claimant is not legally entitled to receive benefits as of November 15, 2009.

He has been overpaid a total of \$6,355.50 in benefits he received for the weeks ending November 21, 2009, through May 8, 2010. This overpayment is waived because the facts in this case meet the requirements of 871 IAC 24.10.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs