

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR J MILLER
Claimant

APPEAL NO. 12A-UI-12018-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/23/11
Claimant: Appellant (1)**

Iowa Code § 96.7(3) – Overpayment of Benefits
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated September 26, 2012, reference 09, that concluded the claimant had been overpaid \$4,149.00 in benefits he received for the weeks between January 23 and March 26, 2011. A telephone hearing was scheduled for October 24, 2012. The appellant did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed. The overpayment was due to the reversal by an administrative law judge of a decision initially granting benefits. The employer participated in the fact-finding interview before the decision granting benefits was issued.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance rules provide that when a party who has received due notice is unable to attend a hearing or request postponement within the prescribed time due to emergency or other good cause, the presiding officer may, if no decision has been issued, reopen the record and schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another

presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision. 871 IAC 26.8(3). The rules further provide that a request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals after the presiding officer has issued a final decision in the case. 871 IAC 26.8(4). Finally, if good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record. 871 IAC 26.8(5).

The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The overpayment was due to the reversal by an administrative law judge of a decision initially granting benefits. Since the employer participated in the fact-finding interview before the decision granting benefits was issued, recovery of the overpayment cannot be waived.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated September 26, 2012, reference 09, is affirmed. The decision holding the claimant overpaid \$4,149.00 in benefits he received between January 23 and March 26, 2011, remains in effect. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs