

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALMA Y HERNANDEZ**  
Claimant

**APPEAL NO. 13A-UI-00323-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/17/12**  
**Claimant: Appellant (4R)**

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 25, 2012, reference 04, that concluded she was overpaid \$2,490.00 in benefits. A telephone hearing was held on February 11, 2013. The claimant was properly notified about the hearing and participated in the hearing.

**ISSUES:**

Was the claimant overpaid unemployment insurance benefits?

Should the Agency recover the overpayment?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits effective June 17, 2012, based on the separation from employment from Swift Pork Company.

The employer protested the claim but no one was available to take the call or provide rebuttal when the fact-finding interview was held. The employer provided general conclusions—not detailed factual information—with the protest. Based on the claimant's truthful statements regarding the employment situation and the lack of information from the employer, an initial determination to award benefits was made on July 11, 2012. The decision concluded the claimant's discharge was not for work-connected misconduct.

The claimant filed for and received a total of \$2,490.00 in benefits for the weeks between June 17 and July 28, 2012. The benefits were not received due to any fraud or willful misrepresentation by the claimant

The employer appealed the decision and an appeal hearing before an administrative law judge was conducted. In the decision of the administrative law judge issued on August 24, 2012, the judge reversed the decision awarding benefits. The factual findings in the decision do not show the claimant received benefits due to fraud or willful misrepresentation. That decision was upheld by the Employment Appeal Board on February 8, 2012, which will become final unless it is appealed to district court within 30 days.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant was overpaid unemployment insurance benefits. Since the decision awarding benefits was reversed and that decision became final, the claimant was overpaid \$2,490.00 in unemployment insurance benefits.

The next issue is whether the benefits should be recovered from the claimant.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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.

The definition of participate is found in 871 IAC 24.10(1). The rule requires 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 rules emphasize that 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. 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.

I conclude that the \$2,490.00 in benefits the claimant received were not the result of fraud or willful misrepresentation by the claimant. I further conclude the employer failed to participate in the proceedings that led to the initial award of benefits because no representative was available to provide information or rebuttal and the documentation submitted was an insufficient substitute for personal participation. As a result, recovery of the overpayment is waived.

**DECISION:**

The unemployment insurance decision dated October 25, 2012, reference 04, is modified in favor of the claimant. The claimant was overpaid \$2,490.00 in benefits, but recovery of the overpayment is be waived. The matter of implementing this decision to adjust the overpayment amount to zero is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css