

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ESTEBAN C GONZALES**  
Claimant

**APPEAL NO. 07A-UI-02094-CT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**THE DEXTER COMPANY**  
Employer

**OC: 02/11/07 R: 04  
Claimant: Respondent (4)**

Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

The Dexter Company filed an appeal from a representative's decision dated February 23, 2007, reference 02, which allowed benefits to Esteban Gonzales as of February 11, 2007. After due notice was issued, a hearing was held by telephone on March 15, 2007. The employer participated by Kathy Baker, Human Resources Secretary. The hearing notice mailed to Mr. Gonzales was returned by the postal service with a notation that it was not deliverable as addressed. Subsequent to the hearing, Mr. Gonzales contacted the administrative law judge. It was determined that the notice of hearing had been sent to an incorrect address. The administrative law judge agreed to reopen the hearing record.

Due notice was issued scheduling the matter for a telephone hearing on March 28, 2007. Mr. Gonzales participated personally. The employer participated by Kathy Baker. Exhibit One was admitted on the employer's behalf.

**ISSUE:**

The primary issue is whether Mr. Gonzales is able to and available for work within the meaning of the law. A secondary issue is whether he has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gonzales has been employed by The Dexter Company since January 16, 2006. He last worked on January 25, 2007, after which he began a medical leave of absence. He was among employees laid off due to lack of work on February 16, 2007. As of the date of the hearing, he had not been recalled to work.

The employer has a program whereby a worker can receive sickness and accident benefits for time missed from work. Benefits begin on the fourth day of illness or the first day of injury and can continue for a maximum of 13 weeks. The benefits are paid for by the employer. Neither the employees nor the union contribute to the fund. The payments are treated as wages and taxes are taken out. The amounts are included in the worker's W-2 form at the end of the year. Mr. Gonzales received sickness and accident benefits in the following amounts for the dates

indicated: \$257.15 for the payroll week ending February 4; \$214.29 for the week ending February 11; \$385.71 for the week ending February 18; and \$85.71 for the week ending February 25. He received his full job insurance benefit amount of \$334.00 for each of the weeks ending February 17 and February 24.

**REASONING AND CONCLUSIONS OF LAW:**

Mr. Gonzales filed a claim for job insurance benefits because he was laid off due to a lack of work. He remained available to work to the same extent as he did prior to the layoff. For this reason, the administrative law judge concludes that he was available for work within the meaning of Iowa Code section 96.4(3) as of February 11, 2007.

Mr. Gonzales claimed job insurance for two weeks for which he was paid sickness and accident benefits by the employer, the weeks ending February 17 and February 24, 2007. The administrative law judge concludes that the sickness and accident benefits should be considered wages, as they were, in essence, paid sick leave. All applicable taxes were deducted and the sickness and accident benefits were included as wages on the W-2 form. The amounts received by Mr. Gonzales should have been deducted from his job insurance benefits.

When an individual claiming job insurance benefits has wages, the amount of wages in excess of one-fourth of the weekly benefit amount is deducted from the weekly benefit amount. The amount of \$302.00 should have been deducted from Mr. Gonzales' benefits for the week ending February 17. The amount of \$4.00 should have been deducted for the week ending February 24. Because these amounts were not deducted, Mr. Gonzales has been overpaid \$337.00 in job insurance benefits. The administrative law judge does not believe there was any fraud involved in his failure to report the sickness and accident benefits.

**DECISION:**

The representative's decision dated February 23, 2007, reference 02, is hereby modified. Mr. Gonzales satisfied the availability requirements of the law effective February 11, 2007. Benefits are allowed, provided he satisfies all other conditions of eligibility. Mr. Gonzales has been overpaid \$337.00 in job insurance benefits due to the failure to report wages.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw/pjs