

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANTRELL M JACKSON
Claimant

APPEAL NO: 19O-UI-08266-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPHA SERVICES INC
Employer

OC: 06/16/19
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 9, 2019, reference 01, which held that the claimant was eligible for unemployment insurance benefits after he was discharged from employment from Alpha Services. Administrative Law Judge Blair Bennett conducted an initial hearing on this matter in appeal 19A-UI-05532-B2-T in which benefits were denied. The claimant appealed the decision indicating it did not participate due to not receiving the hearing notice. The Employment Appeal Board remanded for a new hearing in an order dated September 9, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Steve Thiesen, Tyson Compliance Manager, participated in the hearing on behalf of the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issues are whether the claimant was discharged for misconduct, whether he is overpaid benefits and whether the employer participated in the fact-finding interview.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The Findings of Fact set forth in the decision in appeal 19A-UI-05532 are adopted and incorporated herein as if set forth at length with the exception of the last two paragraphs which are amended as follows:

The claimant has received unemployment insurance benefits in the amount of \$3,640.00 for the ten weeks ending August 24, 2019.

The employer personally participated in the fact-finding interview through the statements of Tyson Compliance Manager Steve Thiesen. The employer also submitted written documentation.

REASONING AND CONCLUSIONS OF LAW:

The Reasoning and Conclusions of Law of the administrative law judge in appeal 19A-UI-05532-B2-T are adopted and incorporated herein as if set forth at length with the exception of the last two paragraphs which are amended as follows:

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, is overpaid benefits in the amount of \$3,640.00 for the ten weeks ending August 24, 2019.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The unemployment insurance decision dated July 9, 2019, reference 01, is reversed. Benefits are denied. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer participated in the fact-finding interview within the meaning of the law. The claimant is overpaid benefits in the amount of \$3,640.00 for the ten weeks ending August 24, 2019.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn