

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAN RODRIGUEZ GONZALEZ
Claimant

APPEAL NO. 12A-UI-08899-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/26/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 19, 2012, reference 06, that concluded she was overpaid \$3,156.00 in benefits. A telephone hearing was held on September 19, 2012. The claimant properly notified about the hearing. The claimant participated in the hearing with his representative, Roger Schoell, and a witness, Ignacio Cruz, and with the assistance of an interpreter, Ike Rocha. Exhibits A-1 and A were admitted into evidence at 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 December 26, 2010, based on the separation from employment from Brycon LLC.

The employer protested the claim and had its office manager participate in the fact-finding interview. After the interview, an initial decision to award benefits was made on March 23, 2011. The decision concluded the claimant did not quit and his discharge on February 4, 2011, was not for work-connected misconduct.

The claimant filed for and received a total of \$3,156.00 in unemployment insurance benefits for the weeks between January 30 and April 2, 2011. The benefits were not received due to any fraud or 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 April 28, 2011, the judge reversed the decision awarding benefits. That decision was upheld by the Employment Appeal Board on August 3, 2011, which became final when it was not appealed 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 \$3,156.00 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 unrebutted 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 \$3,15.00 in benefits the claimant received were not the result of fraud or willful misrepresentation by the claimant. But since the employer participated in the proceedings that led to the initial award of benefits, the overpayment must be repaid.

DECISION:

The unemployment insurance decision dated July 19, 2012, reference 06, is affirmed. The claimant was overpaid \$3,156.00 in benefits. Recovery of the overpayment cannot be waived.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css