

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLIN R DUNNICK
Claimant

APPEAL NO. 13A-UI-03126-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/09/12
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 8, 2013, reference 02, that concluded he was overpaid \$4,356.00 in benefits. A telephone hearing was held on April 11, 2013. The claimant properly notified about the hearing. The claimant 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 December 9, 2012, based on the separation from employment from Archer-Daniels-Midland.

The employer protested the claim with detailed information about why the claimant was discharged and participated in person in the fact-finding interview that was held. An initial decision to award benefits was made on January 15, 2013. The decision concluded the claimant's discharge was not for work-connected misconduct.

The claimant filed for and received a total of \$4,356.00 in unemployment insurance benefits for the weeks between December 9, 2012, and February 23, 2013. 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 February 27, 2013, the judge reversed the decision awarding benefits. That decision has not been overturned.

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 \$4,356.00 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.

I conclude the employer participated in the proceedings that led to the initial award of benefits. As a result, recovery of the overpayment cannot be waived.

DECISION:

The unemployment insurance decision dated March 8, 2013, reference 02, is affirmed. The claimant was overpaid \$4,356.00 in benefits, and recovery of the overpayment cannot be waived.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs