

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE A ABATHAN
Claimant

APPEAL NO. 06A-UI-09502-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/13/06 R: 02
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated September 21, 2006, reference 02, that concluded claimant was overpaid unemployment insurance benefits in the amount of \$1,375.00 as a result of a disqualification decision. A telephone hearing was scheduled and held on October 10, 2006 pursuant to due notice. Claimant did not participate because claimant failed to read and follow the instructions on the hearing notice.

ISSUE:

The issue is whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a disqualification decision that has now been affirmed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that claimant is overpaid unemployment insurance benefits in the amount of \$1,375.00 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been affirmed.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

DECISION:

The decision of the representative dated September 21, 2006, reference 02, is affirmed. Claimant is overpaid unemployment insurance benefits in the amount of \$1,375.00. Claimant's request to reopen the record is denied.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs