

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLENE K RITTER
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 14A-UI-04888-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/24/13
Claimant: Appellant (1)

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for
Non-participation at Fact Finding

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated May 6, 2014, reference 10, that concluded claimant was overpaid unemployment insurance as a result of a disqualification decision. A hearing was scheduled and held on May 30, 2014 pursuant to due notice. Claimant did participate. Employer participated by Michael Payne, Risk Manager. Exhibit One was admitted into evidence.

ISSUE:

The issue is whether claimant is overpaid unemployment insurance benefits. Whether employer's account is charged due to non-participation at fact finding.

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 on appeal. Claimant is overpaid \$2,583.00 for the seven weeks ending February 8, 2014. Employer did participate at the fact-finding interview with a personal representative. Claimant lost the case at the fact-finding level.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.3-7-a, -b.

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The administrative law judge concludes that claimant is overpaid unemployment insurance benefits in the amount of \$2,583.00 for the seven weeks ending February 8, 2014, pursuant to Iowa Code § 96.3-7 as the disqualification decision that created the overpayment decision has now been affirmed. The issue of employer participation is moot because claimant lost at the fact-finding level. Even if it were an issue, the employer established that it did participate at fact finding and as such no waiver of overpayment is appropriate.

DECISION:

The decision of the representative dated May 6, 2014, reference 10, is affirmed. Claimant is overpaid unemployment insurance benefits in the amount of \$2,583.00 for the seven weeks ending February 8, 2014.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css