

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**TRACEY L THOMAS**

Claimant,

and

**IOWA WORKFORCE**

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**HEARING NUMBER: 13B-UI-12755**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

A hearing in the above matter was held November 21, 2012. The administrative law judge's decision was issued November 21, 2012, which affirmed the claims representative's decision dated October 17, 2012, ref. 02 that determined that the Claimant owed an overpayment of \$5773.00. The administrative law judge's decision has been appealed to the Employment Appeal Board. However, there is no evidence as to whether the Employer participated in the Fact-finding Interview which led to the overpayment in the first place.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2011) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the Claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Here, the record does not address whether the Employer participated at the Fact-finding Interview to determine whether the Claimant is liable for the overpayment in light of the aforementioned statute. For this reason, this matter is remanded for further consideration.

**DECISION:**

The decision of the administrative law judge dated November 21, 2012, is **REMANDED** to the administrative law judge in the Unemployment Insurance Appeals Bureau for further investigation and determination as to whether the Employer participated in the Fact-finding Interview; whether an overpayment exists; the amount of the overpayment and whether the Claimant will have to repay the benefits. The administrative law judge shall conduct a hearing following due notice, if necessary. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

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John A. Peno

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Monique F. Kuester

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Cloyd (Robby) Robinson