

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUVENTINO TORRES MACIAS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 14A-UI-04983-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/14
Claimant: Appellant (1)

Iowa Code § 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Juventino Torres Macias (claimant) appealed an unemployment insurance decision dated May 9, 2014, (reference 03), which held that he was overpaid unemployment insurance benefits in the amount of \$2,310.00 as a result of a disqualification decision. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2014. The claimant participated in the hearing. Anna Pottebaum interpreted on behalf of the claimant. The employer participated through Michael Payne, Risk Manager.

ISSUE:

The issue is whether the claimant was overpaid \$2,310.00 in unemployment insurance benefits for the five-week period ending February 15, 2014; whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard and considered all of the evidence in the record, finds that: The claimant filed a claim for benefits effective January 5, 2014. A fact-finding interview was held on January 28, 2014, and both parties participated in the interview. Benefits were allowed in a decision issued on January 30, 2014, (reference 02). The employer appealed and an appeal hearing was held on February 24, 2014. The administrative law judge reversed the fact-finder's decision and denied benefits, which resulted in an overpayment of benefits.

The disqualification decision has become final in the absence of an appeal. The claimant received benefits in the amount of \$2,310.00, for the five-week period ending February 15, 2014.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met:

1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$2,310.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated May 9, 2014, (reference 03), is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,310.00, and is obligated to repay the agency those benefits. The employer's account is not subject to charge.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css