

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUSSELL B BLODGETT**  
Claimant

**APPEAL NO: 13A-UI-09866-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/19/13  
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 22, 2013 determination (reference 02) that held him overpaid \$3,950.00 in benefits he received between May 19 and July 27, 2013. The overpayment occurred as the result of an administrative law judge's decision that reversed an earlier determination that had held him eligible to receive benefits.

The claimant participated in the hearing with his attorney, Barbara Edmonson. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that if the Employment Appeal Board affirms the administrative law judge's decision, the claimant has been overpaid \$3,950.00 in benefits but, is not required to pay back this amount.

**ISSUES:**

Has the claimant been overpaid benefits he received for the weeks ending May 25 through July 27, 2013?

Is the claimant required to pay back any overpayment of benefits?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of May 19, 2013. He filed claims for the weeks ending May 25 through July 27, 2013. He received his maximum weekly benefit amount of \$395.00 for each of these weeks.

In early June 2013, a claims specialist contacted the claimant and asked why his employment ended. The claims specialist tried to contact the employer for information, but the employer did not participate at the fact-finding interview. Based on the information provided during the fact-finding interview, the claims specialist issued a June 7, 2013 determination (reference 01) holding the claimant qualified to receive benefits. The employer appealed this determination.

After the parties presented testimony at a July 31, 2013 hearing, an administrative law judge reversed the June 7, 2013 determination and concluded the claimant was not qualified to receive benefits. See decision for appeal 13A-UI-07225. The claimant appealed this decision

to the Employment Appeal Board. As of September 26, 2013, the claimant has not received a decision from the Employment Appeal Board.

**REASONING AND CONCLUSIONS OF LAW:**

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. 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 § 96.3(7)b.

In this case, the initial determination held the claimant qualified to receive benefits. Later, an administrative law judge reversed the initial determination and held the claimant was not qualified to receive benefits. Based on the decision for 13A-UI-07225, the claimant has been overpaid \$3,950.00 in benefits he received for the weeks ending May 25 through July 27, 2013.

The claimant is not at fault in receiving the overpayment. The employer did not participate at the initial level or fact-finding interview. The definition of participate is found in 871 IAC 24.10(1). The rule requires submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The rules emphasize that the most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. Written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

In this case, the employer did not provide detailed factual information of the quantity and quality that if un rebutted would have been sufficient to result in a decision favorable to the employer. Since the employer did not participate at the fact-finding interview, the claimant is NOT required to pay back the \$3,950.00 overpayment.

If the Employment Appeal Board reverses the decision for appeal 13A-UI-07225, the claimant will not be overpaid any benefits.

**DECISION:**

The representative's August 22, 2013 determination (reference 02) is modified in the claimant's favor. Based on the decision for appeal 13A-UI-07225, the claimant is not legally entitled to receive benefits as of May 19, 2013. As a result he has been overpaid \$3,950.00 in benefits he received for the weeks ending May 25 through July 27, 2013. The claimant is not at fault in receiving the overpayment and is **NOT** required to pay back any of the overpayment.

If the Employment Appeal Board reverses the decision for appeal 13A-UI-07225, the claimant will not be overpaid any benefits because he would be legally entitled to receive benefits as of May 19, 2013.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css