

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L REDING
Claimant

APPEAL NO: 13A-UI-09556-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/20/13
Claimant: Appellant (1)**

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Debra Reding (claimant) appealed a representative's August 9, 2013, decision (reference 03) that concluded she had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled to be held on September 12, 2013. The claimant participated personally.

ISSUE:

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

A representative issued a decision dated February 15, 2013, (reference 01) that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from Tri County Child & Family Development (employer). The employer timely appealed that decision. A hearing was held with an administrative law judge that issued a decision in appeal 13A-UI-02184-E reversing the representative's decision and finding the claimant ineligible for benefits due to the separation. The administrative law judge's decision included a remand to the Agency Claims Section for determination of an overpayment.

The claimant appealed that administrative law judge's decision to the Employment Appeal Board, which affirmed the administrative law judge's decision on August 21, 2013, in 13B-UI-02184. The claimant has appealed the Employment Appeal Board's decision to the District Court and is awaiting a decision.

In issuing the initial representative's decision on February 15, 2013, there had been a fact-finding interview scheduled and held on February 14, 2013. The employer did not directly participate in that fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$6,336.00, received prior to the disqualification imposed on appeal in 13A-UI-02184-E.

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 employer participated in the initial fact-finding interview. Therefore, the claimant did receive benefits for which she was ineligible, the waiver provision Iowa Code section 96.3-7-b does not apply.

Should the claimant prevail on appeal with the District Court, the overpayment issue should be redetermined.

DECISION:

The representative's August 9, 2013 decision (reference 03) is affirmed. The claimant was overpaid unemployment insurance benefits due to a disqualifying separation from employment, and recovery of that overpayment is not waived. Should the claimant prevail on appeal with the District Court, the overpayment issue should be redetermined.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css