

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODY L CARNES**  
Claimant

**APPEAL NO. 15A-UI-00127-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YRC INC**  
c/o **THOMAS & THORNGREN**  
Employer

**OC: 10/19/14**  
**Claimant: Appellant (4)**

Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The claimant appealed a representative's decision dated December 24, 2014, reference 03, which held claimant liable to repay \$2,732.00 in overpayment of unemployment insurance benefits for seven weeks between October 19, 2014 and December 6, 2014 because of a disqualification by an administrative law judge dated December 19, 2014. After due notice, a telephone hearing was scheduled for and held on January 28, 2015. The claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

At issue is whether the claimant has been overpaid job insurance benefits and whether the claimant is liable to repay the overpayment or the employer should be charged based upon the employer's participation in the fact-finding.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: The overpayment issue in this case was created by a disqualification decision of an administrative law judge dated December 19, 2014, that disqualified Ms. Carnes from the receipt of unemployment insurance benefits which held the claimant had voluntarily quit employment without good cause attributable to the employer. Ms. Carnes had received unemployment insurance benefits in the amount of \$2,732.00 for seven weeks between October 19, 2014 and December 6, 2014. In the decision dated December 19, 2014, the administrative law judge had remanded the issue of whether the claimant should have to repay the benefits or the employer be charged to Iowa Workforce Development. The decision dated December 24, 2014, reference 03, found the claimant liable to repay the \$2,732.00 overpayment of unemployment insurance benefits. The administrative law judge takes official notice of the claimant's administrative file. The Iowa Workforce Development notice of unemployment insurance fact-finding interview sheet completed by the adjudicator reflects that the employer's participation in the fact finding did not meet the standards of participation for Iowa Code section 96.3-7(b).

## REASONING AND CONCLUSIONS OF LAW:

Because the claimant was deemed to be ineligible for benefits by an administrative law judge decision, the benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$2,732.00 that was filed on a claim with an effective date of October 19, 2014. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a firsthand witness available for rebuttal.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means 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 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. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, 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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who received 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 upon 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 if it is determined that they did participate in the fact-finding interview. Iowa Code

section 96.3(7). In this case the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

**DECISION:**

The decision of the representative dated December 24, 2014, reference 03, is affirmed as modified. The portion of the determination finding the claimant has been overpaid unemployment insurance benefits in the amount of \$2,732.00 for seven weeks between October 19, 2014 and December 6, 2014 is affirmed. The portion of the determination finding the claimant is obligated to repay this amount is modified to find that the employer's account shall be charged for the overpayment because the employer did not participate in the fact-finding interview.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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