

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID B BARNES Claimant IOWA WORKFORCE DEVELOPMENT DEPARTMENT	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 13A-UI-07033-S2T</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 08/07/11 Claimant: Appellant (1)</div>
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Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

David Barnes (claimant) appealed a representative's May 24, 2013 decision (reference 03) that concluded he 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 August 1, 2013. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision reversing the representative's decision.

ISSUE:

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

A representative issued a decision dated August 30, 2011 (reference 01) that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from Sams Riverside Auto Parts (employer). The employer timely appealed that decision. A hearing was held with an administrative law judge that issued a decision in appeal 11A-UI-11915-NT 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 December 30, 2011, in 11B-UI-11915.

In issuing the initial representative's decision on August 30, 2011, there had been a fact-finding interview scheduled and held on August 29, 2011. The employer did 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 \$3,465.00, received prior to the disqualification imposed on appeal in 11A-UI-11915-NT.

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 § 96.3-7.

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

DECISION:

The representative's May 24, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs