

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL R THIES**  
Claimant

**APPEAL NO. 11A-UI-08746-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/22/09**  
**Claimant: Claimant (2)**

Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Michael R. Thies filed a timely appeal from an unemployment insurance decision dated May 3, 2011, reference 05, that ruled he had been overpaid unemployment insurance benefits in the amount of \$10,738.00 for the 26 weeks ending May 29, 2010. After due notice was issued, a telephone hearing was held July 28, 2011 with Mr. Thies participating. Exhibit A was admitted into evidence on his behalf. Exhibit D-1, the documents from fact finding, was also admitted into evidence. The administrative law judge takes official notice of Agency decision records.

**ISSUE:**

Must the claimant repay the benefits he has received?

**FINDINGS OF FACT:**

Michael R. Thies filed a claim for unemployment insurance benefits effective November 22, 2009. On December 2, 2009 the Agency notified his former employer, Metlife Group, Inc., that the claim had been filed. The employer responded by stating that Mr. Thies had resigned. No further information was provided. The employer did not participate in the fact-finding interview which was not held until February 7, 2010. A fact-finding decision was issued on February 17, 2011. That decision allowed benefits to Mr. Thies. Metlife did not participate in the interview. The company then successfully filed an appeal which resulted in the claimant's ultimate disqualification for benefits.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

The factual question in the present case is whether the employer participated in the fact-finding process. As noted in the findings of fact, the employer did not provide a witness for the fact-finding interview and provided no information other than that Mr. Thies had resigned. The administrative law judge does not consider this to be sufficient participation to meet the terms of the statute and the accompanying rule, 871 IAC 24.10. Under these circumstances, the benefits need not be repaid.

**DECISION:**

The unemployment insurance decision dated May 3, 2011, reference 05, is reversed. The claimant has not been overpaid for the 26 weeks ending May 29, 2010.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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