

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM L BERRYMAN**  
Claimant

**APPEAL NO: 11A-UI-14228-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 12/06/09**

**Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

William Berryman (claimant) appealed a representative's October 25, 2011 decision (reference 04) 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 November 29, 2011. The claimant participated personally.

**ISSUE:**

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

A representative issued a decision dated January 5, 2010 (reference 01) that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from The University of Iowa (employer). The employer timely appealed that decision. A hearing was held with an administrative law judge that issued a decision in appeal 10A-UI-00580-DT 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 did not appeal that administrative law judge's decision and the decision became final.

In issuing the initial representative's decision on January 5, 2010, there had been a fact-finding interview scheduled and held on January 4, 2010. The employer did not directly participate in that fact-finding interview. A review of the information from the fact-finding file indicates that the employer had submitted documents in advance of the fact-finding interview. The documents indicate the claimant's dates of employment. They also provide information containing the circumstances and dates surrounding the claimant's separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is overpaid benefits of \$4,389.00, received prior to the disqualification imposed on appeal in 10A-UI-00580-DT.

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 by supplying documents. An employer can "participate" in a fact-finding interview without necessarily being actively on the phone with the Claims representative. 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 October 25, 2011 decision (reference 04) 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/kjw