

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL W WOOD
Claimant

APPEAL NO: 12A-UI-05614-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/24/11

Claimant: Appellant (4)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Michael W. Wood (claimant) appealed a representative's May 5, 2012 decision (reference 03) that concluded he had been overpaid unemployment insurance benefits. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on June 4, 2012. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary and that a decision could be made on the record. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant overpaid unemployment insurance benefits of \$2,088.00? Does a waiver provision apply?

OUTCOME:

Modified. Overpayment waived.

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective July 24, 2011. A notice of claim and was sent to the employer's address of record, a third-party representative, on August 1, 2011. The employer's representative responded on August 4 by protesting the claim, providing an attached letter which indicated only the claimant's first and last dates of employment and stating that it was the employer's position that "the claimant voluntarily quit for personal reasons," with no further explanation. A fact-finding interview was scheduled with a Claims representative for August 17, 2011. The employer's representative responded to the August 2, 2011 notice of the fact-finding interview on August 10 with a response letter again indicating only the claimant's first and last dates of employment and stating that it was the employer's position that "the claimant voluntarily quit for personal reasons," with no further explanation; an attachment page was provided which was only a "notice of personnel action termination record" from the employer, which again had no information as to the substance of

the separation. The employer's representative's letter indicated that if the Claims representative needed further information for the fact-finding interview to contact the author of the letter, a Dominic Padova, an unemployment state consultant with TALX Employer Services, the third-party employer representative.

During the August 17 fact-finding interview, only the claimant directly participated; when the Claims representative attempted to contact Padova with TALX, he was not available. The information provided by the claimant was that the employer had discharged him because of having medical restrictions. The representative issued a decision dated August 24, 2011 (reference 01) which concluded the claimant was eligible to receive benefits based on the facts of the separation, concluding that there was a discharge but not for misconduct.

The employer appealed the representative's decision. A hearing before an Appeals administrative law judge was conducted on September 26, 2011 in which both the claimant and the employer participated. On September 27, 2011 that judge issued a decision in appeal 11A-UI-11467-S2T which reversed the representative's decision and found the facts of the separation were disqualifying as to the claimant, concluding that the claimant had quit without good cause attributable to the employer. The administrative law judge's decision did include a remand for determination of any overpayment. The claimant did not appeal that administrative law judge's decision to the Employment Appeal Board; that decision has now become final.

The overpayment decision was issued in this case as a result of the September 27, 2011 administrative law judge's decision in 11A-UI-11467-S2T reversing the August 24, 2011 (reference 01) representative's decision. The claimant received unemployment insurance benefits after the separation from employment in the amount of \$2,088.00.

REASONING AND CONCLUSIONS OF LAW:

The initial issue in this case is whether the claimant is overpaid benefits of \$2,088.00, received prior to the disqualification imposed on appeal in 11A-UI-11467-S2T.

The claimant did not timely appeal the administrative law judge's decision that caused the overpayment in this case. If the claimant had a dispute with whether or not of the law he should have been disqualified as a result of the separation from the employer, then he needed to have filed an appeal from that decision to the Employment Appeal Board within the appeal period for that decision. Iowa Code § 96.6-2; *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373 (Iowa 1979). The decision causing the disqualification has now become final and is not subject to review in this case. The claimant was overpaid the benefits.

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 Claims Section either failed to consider or determine whether the claimant was eligible for waiver of recovery of the overpayment, or implicitly concluded he was not eligible for a waiver.

871 IAC 24.10(1) 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 § 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted 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.

Emphasis added. The employer did not provide the name and telephone number of an employee with firsthand information to be available for rebuttal at the fact-finding interview, and it did not provide sufficient supporting detailed factual information for consideration by the Claims representative to fully consider the possibility that the claimant might have quit his employment. As a result, the administrative law judge concludes that the employer did not "participate" in the fact-finding interview within the meaning of Iowa Code § 96.3-7.

There is no showing of fraud or willful misrepresentation having been committed by the claimant. Therefore, while the claimant did receive benefits for which he was ineligible, because the employer did not participate in the fact-finding interview, the waiver provision Iowa Code § 96.3-7-b applies to excuse the overpayment.

DECISION:

The representative's May 5, 2012 decision (reference 03) is modified in favor of the claimant. The claimant was overpaid unemployment insurance benefits due to a disqualifying separation from employment, but recovery of that overpayment is waived.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css