

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SONYA L BUSSAN  
306 CLAY ST  
GALENA IL 61036

OPERATION NEW VIEW  
c/o FISCAL OFFICER  
1473 CENTRAL AVE  
DUBUQUE IA 52001-4853

Appeal Number: 06A-UI-07266-DWT  
OC: 07/03/05 R: 12  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-7 – Vacation Pay  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Sonya L. Bussan (claimant) appealed a representative's July 5, 2006 decision (reference 02) that concluded she had been overpaid \$30.00 in benefits for the week ending June 17, 2006, because she had not correctly reported vacation pay she received from Operation New View (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1<sup>st</sup>, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. 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.

ISSUES:

Did the claimant report the correct amount of vacation pay she received for the week ending June 17, 2006?

Has the claimant been overpaid \$30.00 in benefits for the week ending June 17, 2006?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of July 3, 2005. The claimant reopened this claim during the week of June 11, 2006. The claimant's maximum weekly benefit for this benefit year was \$246.00.

The last day the claimant most recently worked for the employer was June 2, 2006. As of June 2, 2006, the claimant had 44.5 hours of vacation pay. The claimant received an hourly wage of \$11.18 per hour. The claimant worked 35 hours a week.

The claimant did not file a claim for the week ending June 10 because she attributed 35 hours of vacation pay or \$391.30 to this week. The claimant filed a claim for the week ending June 17. The claimant reported she had received \$112.00 in vacation pay for this week. The claimant received \$134.00 in partial benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation pay payment, such payment is deemed as wages and must be deducted from a claimant's maximum weekly benefit amount. Iowa Code § 96.5-7. If the employer designates the vacation pay is to be applied to a specific period, a sum equal to the wages of the claimant for a normal workday shall be applied until the vacation pay is exhausted. 871 IAC 24.16(1). The record indicates the employer indicated the vacation pay should be designated to June 5 to 13, 2006, which the claimant did.

It appears a Department representative determined the claimant should have reported \$142.00 in vacation pay for the week ending June 17, 2006. Since ten hours of vacation pay should be attributed to the week ending June 17, the claimant correctly reported \$112.00. Since no one from the Department participated, the evidence does not indicate why a Department representative attributed \$142.00 of vacation pay to the week ending June 17 instead of \$112.00.

The claimant correctly reported \$112.00 in vacation pay for the week ending June 17, 2006. This means she was not overpaid \$30.00 in benefits for this week. Since the Department withheld \$30.00 from the claimant she was entitled to receive for the week ending July 1, the Department has underpaid the claimant \$30.00 for the week ending July 1, 2006.

DECISION:

The representative's July 5, 2006 decision (reference 02) is reversed. The claimant correctly reported the vacation payment for the week ending June 17, 2006 as \$112.00. The claimant has not been overpaid \$30.00 for the week ending June 17. Since the Department withheld \$30.00 the claimant was legally entitled to receive for the week July 1, the Department is directed to pay the claimant \$30.00 to the claimant for this week.

dlw/cs