

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK R KENDALL
Claimant

APPEAL NO: 15A-UI-02782-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 01/04/15
Claimant: Appellant (2/R)

Iowa Code § 96.5(7) – Vacation Pay
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 26, 2015 (reference 01) determination that held him overpaid \$239 in benefits he received for the week ending January 10, 2015, because he had not correctly reported vacation pay the Department attributed to that week. The claimant participated at the scheduled April 8, 2015 hearing. The employer did not respond to the hearing notice and did not appear for the hearing. The employer submitted a February 23 2015 letter stating the vacation pay the claimant received was for six hours of vacation on January 3, 2015. As a result of the employer's letter, the claimant agreed there was no need for hearing.

Based on the administrative record and the law, the administrative law judge concludes the claimant correctly omitted the vacation payment he received for January 3, 2015, on a weekly claim he submitted for January 4 through January 10, 2015.

ISSUE:

Was the claimant overpaid \$239 in benefits for the week ending January 10, 2015.

FINDINGS OF FACT:

The claimant established a claim during the week of January 4, 2015. The claimant filed a claim for January 4 through 10, 2015. He did not report any vacation pay or wages for this week. He received his maximum weekly benefit amount of \$416 for this week.

The employer paid him \$238.59 vacation pay for six hours of vacation on January 3, 2015. The claimant received the vacation payment in a January 16, 2015 check.

The Department concluded the claimant should have reported the vacation pay for the week ending January 10 and held him overpaid \$239. The Department offset this amount when the claimant filed a claim for benefits for the week ending February 28, 2015.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation payment or becomes obligated to make a payment, the vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. Iowa Code § 96.5(7), 871 IAC 24.26(2).

Since the \$238.59 vacation payment was for vacation the claimant had on January 3, 2015, this vacation payment should not be reported on his claim for the week of January 4 through 10, 2015. The claimant correctly reported he had not received any vacation pay for this week. The claimant was legally entitled to receive \$416 in benefits for the week ending January 10, 2015.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Since the claimant was legally entitled to receive his maximum weekly benefit amount of \$416 for the week ending January 10, 2015, he was not overpaid benefits for this week.

This matter is remanded to the Benefits Bureau to pay the claimant the benefits that were used during the week ending February 28, 2015, to offset the “alleged” overpayment.

DECISION:

The representative’s February 26, 2015 (reference 01) determination is reversed. The claimant correctly reported he had not earned any vacation pay for the week ending January 10, 2015. He was **NOT** overpaid \$239 in benefits for this week.

This matter is **remanded** to the Benefits Bureau to pay the claimant benefits that were used for the week ending February 28, 2015, to offset the alleged overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can