

**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**

**NOEL M ISLEY  
143 WILLISTON AVE  
WATERLOO IA 50702**

**OMEGA CABINETS  
1205 PETERS DR  
WATERLOO IA 50703**

**Appeal Number: 06A-UI-01175-CT  
OC: 12/18/05 R: 03  
Claimant: Appellant (4)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3(7) – Recovery of Overpayments  
Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Noel Isley filed an appeal from a representative's decision dated January 17, 2006, reference 03, which held he had been overpaid job insurance benefits because of his receipt of vacation pay from Omega Cabinets, Ltd. (Omega). After due notice was issued, a hearing was held by telephone on February 16, 2006. Mr. Isley participated personally and Exhibit A was admitted on his behalf. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Isley last worked for Omega on December 19 and was discharged when he reported to work on December 20, 2005. For the one-week payroll period ending December 24, he was paid for 8 hours of work, 32 hours of vacation, and 3 hours of earned time off. His hourly rate of pay was \$10.20. Mr. Isley typically worked 8 hours each day, Monday through Friday.

When he filed his claim for the week ending December 24, 2005, Mr. Isley reported earnings of \$309.00. He reported the net amount, rounded up, of the check he received for the payroll period ending December 24. He was not paid job insurance benefits for the week because his reported earnings exceeded his weekly job insurance benefit amount plus \$15.00. Mr. Isley was paid \$292.00 in job insurance benefits for the week ending December 31, 2005. The overpayment assessed in the representative's decision has been recovered by withholding from benefits due Mr. Isley for the week ending January 7, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Isley has been overpaid and, if so, in what amount. He filed his claim effective December 18, 2005. The employer timely reported the fact that he was to receive vacation pay in the gross amount of \$357.00 but did not designate a period to which it was to be applied. Unless otherwise designated, vacation pay is attributed to each workday following the last day worked until exhausted. 871 IAC 24.16(3). Mr. Isley earned wages for Monday, December 19. His four days of vacation pay would be applied to December 20, 21, 22, and 23. He was not eligible for benefits for the week ending December 24 because of excess earnings.

Mr. Isley still had the three hours of earned time off to be deducted during the week ending December 31. The three hours represented pay of \$30.60. Because this amount was not deducted, Mr. Isley was overpaid by \$31.00 for the week ending December 31, 2005. Since the full overpayment of \$143.00 has been recovered, Mr. Isley has been underpaid \$112.00.

The administrative law judge believes Mr. Isley was acting in good faith when he reported the total net amount of the check he received for the week ending December 24, 2005. However, Iowa law still requires that the overpayment be recovered.

DECISION:

The representative's decision dated January 17, 2006, reference 03, is hereby modified. Mr. Isley was overpaid \$31.00 in job insurance benefits for the week ending December 31, 2005. Due to recovery of the full overpayment amount, he has been underpaid \$112.00 in job insurance benefits.

cfc/s