

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

---

CARL BEHANISH

Claimant,

and

IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT

:  
:  
:  
:  
:  
:  
:  
:

HEARING NUMBER: 10B-UI-12659

EMPLOYMENT APPEAL BOARD  
DECISION

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.3-7**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A representative issued a decision dated August 24, 2009 that concluded the Claimant received benefits while also receiving vacation pay. The Claimant timely appealed that decision and in appeal 09A-UI-12658 the Administrative Law Judge affirmed. The Administrative Law Judge issued a separate decision in case 09A-UI-12659 affirming the assessment of an overpayment of \$1,930.00. The Claimant timely appealed the Administrative Law Judge's decisions and in concurrently issued decision in case 09A-UI-12658 the Board today modifies the Administrative Law Judge's calculation of the vacation pay, and vacation period. The Board now in this decision remands for recalculation the overpayment decision.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The Board concludes that the Claimant has not been overpaid unemployment insurance benefits in the amount of \$1,930.00 pursuant to Iowa Code section 96.3-7. The calculation of the vacation pay, and vacation period made by the Administrative Law Judge has been modified by the Board. The Claimant will be overpaid benefits as a result of the Board's modification, and the Board now remands to claims to recalculate the amount.

## DECISION:

The administrative law judge's decision dated December 14, 2009 is **REVERSED IN PART AND REMANDED**. The Employment Appeal Board concludes that the claimant was not overpaid for all the weeks assessed by the Administrative Law Judge in this case. This case is remanded to Iowa Workforce Development, Claims Section for a recalculation of the amount of the overpayment in consonance with our decision in 09A-UI-12658.

---

John A. Peno

---

Elizabeth L. Seiser

---

Monique F. Kuester

RRA/fnv