

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 11IWDUI091
OC: 5/23/10
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

JEFFREY GREINER
206 K AVENUE
GRUNDY CENTER, IA 50638-1816

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

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309

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.

JOE WALSH, IWD

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 the department. 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)

July 28, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Jeffrey Greiner filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 21, 2011 (reference 03). In this decision, the Department determined that Mr. Greiner was overpaid \$854 in unemployment insurance benefits for the period between May 23, 2010 and June 5, 2010. The decision states that the overpayment resulted from the appellant failing to report earnings and vacation pay from Progressive Tool Co. Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on April 21, 2011 to schedule a contested case hearing. The hearing was originally scheduled for June 3, 2011, but was continued at the Department's request. On June 30, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Linda Rose represented the Department and presented testimony. Appellant Jeffrey Greiner appeared and

presented testimony. Exhibits 1 through 6 were submitted by the Department and admitted into the record as evidence.

Arrangements were made at the hearing to hold the record open until July 7, 2011 in order for the appellant to submit two additional documents: 1) his final pay stub; and 2) a pay stub for his vacation pay. The Department had no objection to the documents being admitted as evidence upon receipt. Mr. Greiner submitted the documents prior to the deadline; they are admitted as Exhibits A and B.

ISSUE

Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.

FINDINGS OF FACT

Jeffrey Greiner filed a claim for unemployment benefits with an effective date of May 23, 2010. Mr. Greiner's weekly benefit amount was \$402.

The Department conducted a random audit of Mr. Greiner's claim for the second quarter of 2010. Progressive Tool Co. Inc. reported that Mr. Greiner earned wages during the week ending May 29, 2011 and received vacation pay in the week ending June 5, 2011. When making claims for those weeks, Mr. Greiner did not report having earnings.

The following chart sets out the amounts claimed by Mr. Greiner and reported by Progressive, as well as the amount of benefits Mr. Greiner received each week and the amount of benefits the Department believes Mr. Greiner should have received if his wages had been correctly reported.

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
5/29	\$0	\$768	\$402	\$0
6/5	\$0	\$2,170	\$402	\$0

In addition to the benefits received that are listed in the chart above, Mr. Greiner also received a \$25 stimulus payment in each of the listed weeks. An individual receives a stimulus payment of \$25 in each week that he or she is entitled to any amount of benefits; an individual is not eligible for the stimulus payment if he or she is not eligible for benefits during a benefit week. Based on the foregoing, the Department determined that Mr. Greiner was overpaid unemployment benefits in the amount of \$854. (Exh. 5, 6).

On the Wages Cross Match form that Progressive returned to the Department, it indicated that the last day Mr. Greiner worked was May 28, 2010. It also indicated that the \$2,170 paid for the week of May 30 through June 5, 2011 was vacation pay. (Exh. 6). At hearing, Mr. Greiner testified that the last day he worked for Progressive was the

Friday before Memorial Day. He recalled this because he knew he was laid off before the holiday weekend and did not receive holiday pay. At hearing, Mr. Greiner recalled that the calendar date of his last day worked was May 21, 2010. (Greiner testimony). I take judicial notice of the fact that Memorial Day was on May 31, 2010, and that the Friday prior to Memorial Day was May 28, 2010.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.¹

A. Wages

In this case, the claimed overpayment is due in part to wages the Department alleges that Mr. Greiner did not report. For the week ending May 29, 2010, Progressive reported that Mr. Greiner earned \$768 in wages. When making his claim, Mr. Greiner did not report any wages earned that week. At hearing, Mr. Greiner testified that he last worked for Progressive the Friday prior to Memorial Day, but he identified the date of that Friday as May 21, rather than May 28, which was the actual date of the Friday prior to Memorial Day in 2010. While Mr. Greiner did submit a pay stub from Progressive showing that he earned \$767.75 for the pay period ending May 23, 2010, there is no way to know whether that pay stub is the last one that Mr. Greiner received. The earnings amount, \$767.75, does correspond to the amount Progressive reported, \$768, for the week ending May 29, 2010. However, given Mr. Greiner's testimony that he was laid off the Friday immediately prior to Memorial Day and the employer's assertion that his last day worked was May 28, 2010, I find that the greater weight of the evidence supports the conclusion that the last day Mr. Greiner worked was May 28, 2010.

Mr. Greiner earned \$768 in wages during the week ending May 29, 2010. He was paid \$427 in unemployment insurance benefits for that week. An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.² Mr. Greiner, then, could have earned up to \$417 in a week and still received some amount of unemployment benefits. Since he earned more than \$417, he was not entitled to unemployment insurance benefits for the week ending May 29, 2010. The Department correctly determined that an overpayment existed for that week in the amount of \$427.

¹ Iowa Code § 96.3(7)(a) (2011).

² Iowa Code § 96.19(38)(b)(1) (2011).

B. Vacation Pay

If an employer makes a payment of vacation pay or pay in lieu of vacation, the employer may designate to the Department the period to which the payment should be allocated. In order for the employer's designation to be effective, it must be made to the Department in writing within 10 calendar days after the employer is notified of the individual's claim.³

Generally speaking, vacation pay is deemed wages.⁴ If an employer does not designate the time period to which the vacation payment should apply,

[p]ayments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter.⁵

The Department's regulations make clear that if the employer does not designate the time period of the vacation pay, the entire amount is applied to the one-week period starting on the first workday following the last day worked.⁶ The employer here did not designate the time period to which the vacation pay should be allocated. The employer reported that the vacation pay was issued during the week of May 30 through June 5, 2010. Consequently, the Department correctly allocated it to the one-week period following the last day worked by Mr. Greiner, which was the week ending June 5, 2010. As the vacation pay exceeded \$417, Mr. Greiner was not entitled to any unemployment benefits during that week. The Department correctly determined that Mr. Greiner was overpaid \$427 during the week ending June 5, 2010.

DECISION

Iowa Workforce Development's decision dated January 21, 2011 (reference 03) is AFFIRMED. The claimant has been overpaid benefits in the amount of \$854.

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³ Iowa Code § 96.5(7)(b) (2011).

⁴ Iowa Code § 96.5(7)(a) (2011).

⁵ Iowa Code § 96.5(7)(d) (2011).

⁶ 871 Iowa Administrative Code (IAC) 24.16(3)-(4).