

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELEN W SCARFF
Claimant

APPEAL NO. 10A-UI-07263-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT
Employer

**Original Claim: 05/03/09
Claimant: Appellant (1)**

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 13, 2010, reference 04, which held the claimant had been overpaid unemployment insurance benefits in the amount of \$228.00 for the week between May 10, 2009 and May 16, 2009. After due notice, a telephone conference hearing was scheduled for and held on July 2, 2010. The claimant participated. The case was heard in conjunction with 10A-UI-07262-VST. The record consists of the testimony of the claimant and Claimant's Exhibit A. Official notice is taken of agency records. This decision is controlled by the administrative law judge decision in 10A-UI-07262-VST.

ISSUE:

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant received unemployment insurance benefits in the amount of \$228.00 for the week between May 10, 2009, and May 16, 2009. The overpayment occurred because the claimant's vacation pay was not applied to this week, in accordance with the designation of the employer. In an administrative law judge decision in 10A-UI-07262-VST, the administrative law judge concluded that the vacation pay should be applied to the week between May 10, 2009, and May 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant did report her vacation pay received from the employer to the agency. She reported it for the week prior, which was contrary to the designation of the employer. The employer's designation controls in this case. The claimant was, therefore, overpaid benefits in the amount of \$228.00 and this amount must be repaid.

DECISION:

The decision of the representative dated May 13, 2010, reference 04, is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of \$228.00 for the week between May 10, 2009, and May 16, 2009.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw