

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIN D CONARD

Claimant

APPEAL NO. 08A-UI-08652-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 04/22/07 R: 04
Claimant: Appellant (2)**

Section 96.3-7 – Benefit Overpayment

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Darin Conard filed an appeal from a representative's decision dated July 1, 2008, reference 03, which held the claimant to be overpaid benefits in the amount of \$334.00 for the week between December 2, 2007 and December 8, 2007 because the claimant failed to report vacation pay. After due notice was issued, a hearing was held by telephone on October 14, 2008. Mr. Conard participated personally. Although notified, the employer did not participate.

ISSUE:

At issue in this matter is whether the claimant filed a timely appeal and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was issued a check by Wal-Mart Stores, Inc. on December 13, 2007 covering among other things, incentive pay previously earned and payable to Mr. Conard. The warehouse incentive pay was in the amount of \$340.41 (Exhibit One). The employer incorrectly reported to Workforce Development that the amount had been issued to Mr. Conard in the form of vacation pay. The claimant had utilized all vacation time by taking days off work and received no remuneration from Wal-Mart Stores in the form of vacation pay.

The claimant's filing of an appeal in this matter was delayed because Mr. Conard did not receive an initial determination informing him of the overpay decision or the basis for the decision. When the claimant subsequently learned that a decision had been made, he immediately filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant has good cause for late filing. It does.

The question then becomes whether the claimant received vacation pay between December 2 and December 8, 2007 causing him to be overpaid \$334.00 in unemployment insurance benefits. It does not.

The evidence in the record establishes that the pay in question was for a warehouse incentive bonus that had been earned by Mr. Conard earlier in the year but paid out to him on December 13, 2007 by Wal-Mart Stores. Mr. Conard received no vacation pay from the employer at or near this time. It was the claimant's practice to utilize vacation pay by taking the time and therefore received no remuneration from Wal-Mart Stores for vacation time.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$334.00 as he did not receive disqualifying vacation pay for the period in question.

DECISION:

The representative's decision dated July 1, 2008, reference 03, is reversed. The claimant is not overpaid unemployment insurance benefits in the amount of \$334.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs