

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A POOLE
Claimant

APPEAL NO. 10A-UI-13256-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION
Employer

OC: 03/07/10
Claimant: Appellant (2)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
871 IAC 24.13(2) and (3) – Benefit Deductibility

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2010 (reference 01) decision that found the claimant overpaid benefits due to the receipt of back pay for the week ending March 13, 2010. After due notice was issued, a telephone conference hearing was held on November 9, 2010. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant is overpaid benefits as a result of compensation time pay.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant took the five mandatory unpaid days off (MUD) from March 7 through March 13, 2010. Earlier in the winter he earned compensation time because of time spent plowing snow and during that pay period was paid for 49.9 hours' compensation time.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has not been overpaid benefits.

Iowa Code § 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.

Compensation time pay earned prior to the benefit payment period in question is not considered deductible pursuant to 871 IAC 24.13(2) or (3). The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$399.00 pursuant to Iowa Code § 96.3(7) as the claimant's compensation time payment was for hours worked prior to the week ending March 13, 2010.

DECISION:

The September 21, 2010 (reference 01) decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$399.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs