

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER L JONES**

Claimant

**APPEAL NO. 08A-UI-01930-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EARLE M JORGENSEN COMPANY**

Employer

**OC: 01/06/08 R: 04  
Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Jennifer L. Jones (claimant) appealed a representative's February 8, 2008 decision (reference 07) that concluded she was overpaid unemployment insurance benefits due to the receipt of vacation pay from Earle M. Jorgensen Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2008. This appeal was consolidated for hearing with five related appeals: 08A-UI-01925-DT, 08A-UI-01926-DT, 08A-UI-01927-DT, 08A-UI-01928-DT and 08A-UI-01929-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant overpaid unemployment insurance benefits for either of the weeks ending January 12 or January 19, 2008 due to the receipt of properly allocated severance pay or vacation pay?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 2, 2007. She worked Monday through Friday, 8:00 a.m. to 5:00 p.m., at an hourly rate of \$12.00. Her last day of work was January 3, 2008. The claimant established an unemployment insurance benefit year effective January 6, 2008. Her weekly benefit amount was calculated to be \$274.00. The employer's representative responded to the Agency's Notice of Claim by reporting that the claimant had, subsequent to her separation, been paid vacation pay of \$332.64 for 27.72 hours and severance pay of \$288.00 for 24 hours of regular pay and \$5.40 for .30 hours of overtime.

The claimant's final check covered the period from December 31, 2007 through January 6, 2008. During that period, she was paid for 32.0 hours of regular pay, 8.0 of holiday pay (for

January 1, 2008), and .80 hour of overtime worked on January 2, 2008. Therefore, she was paid for the full 40-hour week, with regular pay for each of the four work days that week even though she did not work on January 4, 2008. The final paycheck also included a payment for the claimant's accrued and unused 27.72 hours of vacation pay, in a gross amount of \$332.64. No additional payments were made other than the vacation pay representing time after January 6.

The claimant was paid unemployment insurance benefits for the week ending January 12, 2008 in the amount of \$274.00.

## **REASONING AND CONCLUSIONS OF LAW:**

If severance pay or vacation pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Code section 96.5-7 provides:

An individual shall be disqualified for benefits: ...

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments 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. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining

benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

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.

As determined in the concurrently issued decisions in appeal 08A-UI-01927-DT and 08A-UI-01928-DT, there was no overpayment for any week due to the receipt of severance pay. However, as determined in the concurrently issued decision in 08A-UI-01929-DT, the claimant did receive vacation pay for the week January 12 and had no remaining eligibility for that week. Therefore, the benefits that were paid to her for that week were overpaid and subject to recover, even though those benefits were received in good faith.

The total amount of overpayment reflected in the representative's decision was already only \$274.00. Even though there had been prior determinations as to additional overpayments, while the representative's decision did not explain which prior decisions were being revised or effectively rescinded, it is apparent that the representative was already adjusting the claimant's overpayment to reflect that there was no additional overpayment for the supposed but non-existent severance pay allocation.

**DECISION:**

The representative's February 8, 2008 decision (reference 07) is affirmed. The claimant was overpaid unemployment insurance benefits for the week ending January 12, 2008, due to the receipt of vacation pay. That amount is her total overpayment for the wage substitute allocation.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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