

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE K MARTIN
Claimant

APPEAL NO: 09A-UI-06226-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WOODHARBOR MOLDING & MILLWORK
Employer

OC: 06/08/08
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nicole K. Martin (claimant) appealed a representative's April 14, 2009 decision (reference 01) that concluded she had been overpaid unemployment insurance benefits for the week ending November 29, 2008. After hearing notices was mailed to the parties' last-known address of record, a telephone hearing was held on May 14, 2009. The claimant participated in the hearing. Lorie Nelson participated in the hearing on behalf of the employer. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision affirming the representative's decision that the claimant was overpaid unemployment insurance benefits.

ISSUE:

Was the claimant is overpaid unemployment insurance benefits of \$108.00 as a result of the receipt of vacation or other pay?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective June 8, 2008. Her weekly benefit amount was calculated to be \$303.00. She reopened the claim by filing an additional claim effective November 23, and she filed a weekly claim for benefits for that week, ending November 29, due to a lack of work for that week. She reported earning wages in the amount of \$270.00. The claimant received unemployment insurance benefits for that week in the amount of \$108.00.

A notice of the reopening of the claim was sent to the employer on January 21, 2009, and the employer responded on January 27. The employer reported that the claimant had worked 8.5 hours on November 24, for which she earned \$106.68. The claimant's hourly wage at that time was \$12.55. The employer further reported that the claimant had received \$163.15 for nine hours of holiday pay for November 27 and November 28. These combined amounts equal \$269.83, rounded to the \$270.00 as reported by the claimant.

On the employer's January 27 response the employer also included information that the claimant had been paid \$50.20 for vacation pay for a half-day of vacation the claimant took on December 5. The claimant had otherwise worked during the week of December 6 and did not file a weekly claim for unemployment insurance benefits for that week. However, the Agency claims representative who issued the decision in this case added the \$50.00 to the claimant's earnings for the week ending November 29, thus taking the claimant's supposed total earnings for the week to \$320.00 (rounded), thereby taking the claimant past the \$318.00 threshold (\$303.00 weekly benefit amount plus \$15.00) under which she could receive some partial unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay or other pay was or will be 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; the vacation pay paid or owed "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." Iowa Code § 96.5-7.

Iowa Code § 96.19-38-b provides in part:

- b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

In this case, the period of partial unemployment was the week ending November 29. She properly reported her earned wages and holiday pay for that week. The vacation pay attributed to that week by the Agency was incorrectly allocated to that week. She correctly reported her total earnings for the week as \$270.00 (rounded), and as a result she was eligible for partial unemployment insurance benefits for the week of \$108.00, and was not overpaid that amount in benefits.

DECISION:

The representative's April 14, 2009 decision (reference 01) is reversed. The claimant was not overpaid benefits of \$108.00 for the week ending November 29, 2008.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css