

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TAMARA L O'BRIEN
1460 CURTIS
DUBUQUE IA 52003**

**OPERATION NEW VIEW
ATTN EXECUTIVE DIRECTOR
1473 CENTRAL AVE
DUBUQUE IA 52001-4853**

**Appeal Number: 04A-UI-10600-CT
OC: 07/11/04 R: 04
Claimant: Appellant (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(7) – Vacation Pay
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tamara O'Brien filed an appeal from a representative's decision dated September 23, 2004, reference 04, which held she had been overpaid \$249.00 in job insurance benefits. After due notice was issued, a hearing was held by telephone on October 21, 2004. Ms. O'Brien participated personally. The employer participated by Joy Davis, Administrative Assistant/Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. O'Brien is employed by Operation New View and was laid off for the summer on June 29, 2004. In connection with her temporary separation, she was paid vacation pay in the gross amount of \$913.81. She worked eight hours per day, five days per week. Her hourly rate of pay was \$11.24. Ms. O'Brien filed her claim for job insurance benefits effective July 11, 2004. Her weekly job insurance benefit amount is \$327.00.

Ms. O'Brien also works part time for Northeast Iowa Community College. Her earnings for the week ending July 17, 2004 were \$21.00.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is what effect Ms. O'Brien's receipt of vacation pay has on her claim for job insurance benefits. She received the gross amount of \$913.81 as vacation pay. Her hourly rate of pay was \$11.24. Therefore, her vacation pay represented 81.3 hours of vacation time. Ms. O'Brien's last day of work was on June 29 and, therefore, her vacation pay would be deducted beginning June 30. Three days (24 hours) of vacation pay would be deducted for the week ending July 3, 2004. Five days (40 hours) would be deducted for the week ending July 10. The remaining 17.3 hours of vacation time would be deducted for the week ending July 17. The 17.3 hours represents \$194.45, rounded to the nearest dollar, to be deducted for the week ending July 17.

There were no deductions from Ms. O'Brien's benefits for the week ending July 17 as the \$21.00 in wages for the week were not sufficient to trigger a deduction. Vacation pay is deducted on a dollar-for-dollar basis. Because the \$194.00 in vacation pay Ms. O'Brien had to be deducted for the week ending July 17 was not deducted, she has been overpaid \$194.00.

Ms. O'Brien questioned why \$78.00 was paid to her on or about September 22, 2004. She was previously assessed an overpayment of \$456.00. Benefits owed her for the week ending August 21, 2004 were withheld to offset against the overpayment. The overpayment was later reduced to \$249.00. The difference between the amount withheld and the revised overpayment amount was \$78.00. Therefore, Ms. O'Brien was entitled to a refund of the excess.

DECISION:

The representative's decision dated September 23, 2004, reference 04, is hereby modified. Ms. O'Brien has been overpaid \$194.00 in job insurance benefits for the week ending July 17, 2004 because of her receipt of vacation pay.

cfc/tjc