

**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**

**NANCY L HUNZIKER
605 – 8TH ST E
CRESCO IA 52136-1167**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-07778-DT
OC: 06/25/06 R: 04
Claimant: Appellant (2/R)**

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 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Nancy L. Hunziker (claimant) appealed a representative's July 26, 2006 decision (reference 03) that concluded she had been overpaid unemployment insurance benefits for the week ending July 8, 2006. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 21, 2006. This appeal was consolidated for hearing with one related appeal, 06A-UI-07777-DT. The claimant participated in the hearing and was represented by Mark Hunziker, who also offered testimony on her behalf. 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.

FINDINGS OF FACT:

A representative issued a decision dated July 26, 2006 (reference 02) that concluded the claimant was disqualified from receiving benefits for the week ending July 8, 2006 due to the receipt of vacation pay from Merit Resources, Inc. (employer). The claimant timely appealed that decision and in the concurrently issued decision in appeal 06A-UI-07777-DT, that decision has been modified to remove the disqualification for the week ending July 8.

The overpayment decision was issued in this case as a result of the July 26, 2006 (reference 02) disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$392.00.

Iowa Code § 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.

The administrative law judge concludes that the claimant is not overpaid benefits due to the disqualification decision issued on July 26, 2006 (reference 02), which has now been modified to remove the disqualification for the week ending July 8, 2006. However, as noted in the concurrently issued decision in 06A-UI-07777-DT, there is likely a portion of benefits paid for the week ending July 1, 2006 which would have been overpaid.

DECISION:

The representative's July 26, 2006 decision (reference 03) is reversed. The claimant is not overpaid benefits in the amount of \$392.00 for the week ending July 8, 2006. The matter is remanded to the Claims Section for determination any resulting overpayment for the week ending July 1, 2006.

ld/pjs