

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E FALTINSON
Claimant

APPEAL NO. 08A-UI-01461-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/28/07 R: 01
Claimant: Appellant (2)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant appealed from the February 4, 2008, reference 02, decision that concluded the claimant was overpaid unemployment insurance benefits as a result of a failure to report or incorrectly reporting vacation pay from Merit Resources (employer). A telephone hearing was scheduled and held on February 26, 2008, pursuant to due notice. The claimant did participate. Exhibit D-1 was received into evidence

ISSUE:

The issue is whether the claimant was overpaid unemployment insurance benefits due to the receipt of vacation pay.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant did correctly report that he received no vacation from the employer based on his separation from employment. The employer incorrectly reported that it paid the claimant vacation pay in a Notice of Claim dated January 18, 2008. During those same weeks, the claimant reported no wages. The claimant did not receive any vacation pay from the employer after his separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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 has not been overpaid unemployment insurance benefits pursuant to Iowa Code § 96.3(7) as the claimant did correctly report that he received no vacation pay from the employer based on his separation from employment. The representative's decision calculation is incorrect.

DECISION:

The February 4, 2008 reference 02 decision is reversed. The claimant was not overpaid unemployment insurance.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs