

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY H LEPPERT**  
Claimant

**APPEAL NO: 10A-UI-03912-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 02/14/01  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a representative's March 2, 2010 decision (reference 01) that held he had been overpaid \$88.00 for the week ending February 20, 2010, because he had not correctly reported vacation pay for this week. A telephone hearing was held on April 15, 2010. The claimant participated in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant receive vacation pay that should be attributed to the week ending February 20, 2010?

Has the claimant been overpaid \$88.00 in benefits he received for the week ending February 20, 2010?

**FINDINGS OF FACT:**

The claimant took eight hours of vacation on February 5, 2010. He received \$88.00 of for this vacation time on a check issued to him on February 26, 2010. The claimant's last day of work for this employer was February 12, 2010.

The claimant established a claim for benefits during the week of February 14, 2010. His maximum weekly benefit amount is \$336.00. The claimant did not report any vacation pay for the week ending February 20, 2010. He filed a claim for this week and received his maximum weekly benefit amount.

**REASONING AND CONCLUSIONS OF LAW:**

Vacation pay must be deducted from unemployment insurance benefits. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the

week. Iowa Code section 96.5-7. When an employer makes a vacation payment or becomes obligated to make a payment, the vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code section 96.5-7, 871 IAC 24.16.

The claimant's paycheck shows he received vacation pay for the period February 5 through 18, 2010. The record, however, establishes the claimant took this vacation time on February 5 and did not work after February 12, 2010. Therefore, the record does not establish that the \$88.00 vacation payment should be attributed to the week ending February 20, 2010. It is properly attributed to February 5, 2010.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant has not been overpaid \$88.00 in benefits for the week ending February 20, 2010. Since the claimant did not receive any vacation pay the week ending February 20, he was legally entitled to receive his maximum weekly benefit amount of \$336.00 for this week.

**DECISION:**

The representative's March 2, 2010 decision (reference 01) is reversed. The claimant did not receive vacation pay that should be attributed to the week ending February 20, 2010. The claimant took vacation on February 5 and the \$88.00 in vacation pay he received is attributed to that day. The claimant was not overpaid \$88.00 in benefits. Since the Department has already offset \$88.00 from the claimant's benefits, this amount shall be paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs