

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUE A BURNS
Claimant

APPEAL NO. 09A-UI-06933-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUNES EYE CARE
Employer

OC: 04/20/08
Claimant: Appellant (3/R)

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 30, 2009, reference 04, decision that found the claimant had been overpaid \$1,119.00 for three weeks based for failure to report severance pay. After due notice was issued, a telephone conference hearing was held on June 1, 2009. Claimant participated. Employer did not participate.

ISSUE:

The issue is whether the claimant was overpaid three weeks benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on January 16, 2009. She was paid her regular pay on January 16, 2009. She received two weeks' vacation pay in the amount of \$1,038.50. While the employer characterized the pay as severance pay there was no convincing evidence to find the pay was severance pay. The evidence supports the fact the claimant received her two weeks accumulated vacation pay. The copy of the claimant's notification of deposit is the best evidence of the amount the claimant received. While there are work sheets from the employer indicating differing payments, the notification of deposit for the pay date of February 13, 2008 is found to be the correct amounts of gross vacation pay the claimant received.

The employer was notified the claimant had refiled her claim by a Notice of Claim sent to the employer on January 20, 2009. The notice informed the employer it had ten days, until January 30, 2009, to respond. The employer responded on February 4, 2009 indicating the claimant received \$1,384.80 in severance pay. The claimant's weekly benefit amount is \$344.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

In a decision issued June 2, 2009, [09A-UI-06932-E2T], I found the claimant had been overpaid one week of benefits in the amount of \$344.00 for the week ending January 24, 2009. The employer sent in the response to the notice of claim after the ten-day period to respond had expired. The claimant's last day of work was January 16, 2009. The check issued to the claimant for vacation pay for \$1,038.60 is deemed to be vacation pay for the week ending January 24, 2009. Since the claimant's weekly benefit amount is \$344.00 the claimant was overpaid for this week.

DECISION:

The April 30, 2009, reference 04, decision is modified to be an overpayment of one week, \$344.00, and remanded for a determination as whether the claimant must repay the overpayment.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs