

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALLACE, THERESA, A
Claimant

APPEAL NO. 11A-UI-03933-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/26/09
Claimant: Appellant (1)**

Iowa Code Section 96.3(7) –Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2011, reference 02, decision that she was overpaid \$413.00 for the benefit week ending August 1, 2009 due to receipt of vacation pay for that week. After due notice was issued, a hearing was held on April 20, 2011. Claimant participated. Exhibits A through F were received into evidence. The hearing in this matter was consolidated with the hearing in appeal number 11A-UI-03932-JTT.

ISSUE:

Whether the claimant was overpaid \$413.00 for the benefit week ending August 1, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Wallace was employed by FBL Financial Group on a full-time basis until July 1, 2009, when she was laid off. At the time Ms. Wallace separated from the employment she had accrued but not yet used 22 days of vacation pay benefit. The gross dollar value of the vacation pay benefit was \$7,759.46. The employer disbursed the appropriate net amount to Ms. Wallace.

Ms. Wallace established a claim for unemployment insurance benefits that was effective July 26, 2009. Workforce Development established her weekly benefit amount at \$388.00. For the week ending August 1, 2009, Ms. Wallace reported zero wages and received \$388.00 in regular unemployment insurance benefits and an additional \$25.00 in federal stimulus benefits. Ms. Wallace's eligibility for the additional \$25.00 was contingent upon Ms. Wallace being eligible for the regular unemployment insurance benefits.

On July 31, 2009, Workforce Development mailed a notice of claim to the employer. The notice provided an August 10, 2009 deadline for the employer's response. On the evening of August 10, 2009, the employer faxed its response to Workforce Development. The Unemployment Insurance Service Center received the employer's response after business hours on August 10, 2009 but date-stamped it is being received the following day, August 11, 2009. The employer did not contest liability on the claim. The employer provided information concerning the dates to which it wanted Ms. Wallace's vacation pay benefit applied when

determining her eligibility for unemployment insurance benefits. The employer designated July 2, 2009 through July 31, 2009 as the dates to which the employer wanted the \$7,759.46 in vacation pay applied.

Based on the information provided by the employer, a Workforce representative apportioned the vacation pay and concluded that Ms. Wallace received vacation pay for the week ending August 1, 2009 that exceeded her weekly benefit amount and that Ms. Wallace was not eligible for unemployment insurance benefits for that week.

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.

Because Ms. Wallace received unemployment insurance benefits for the week that ended August 1, 2009, and was later deemed ineligible for those benefits, the benefits Ms. Wallace received for that week constitute an overpayment of benefits that Ms. Wallace must repay to Iowa Workforce Development. Ms. Wallace is overpaid \$413.00 for the week ending August 1, 2009.

DECISION:

The Agency representative's March 25, 2011, reference 02, decision is affirmed. The claimant was overpaid \$413.00 for the benefit week ending August 1, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css