

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANELLE S BINNEBOSE
Claimant

APPEAL NO. 09A-UI-06380-S2T

WOODHARBOR MOLDING & MILLWORK
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/23/08
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed from the April 15, 2009, reference 01, decision that concluded the claimant was overpaid unemployment insurance benefits as a result of a failure to report or incorrectly reporting vacation/severance pay from Woodharbor Molding & Millwork (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 21, 2009. The claimant participated personally. The employer participated by Lorie Nelson, Human Resources Specialist. Exhibit D-1 was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's last day of work was November 21, 2008. The employer incorrectly completed the Notice of Claim regarding vacation pay. The vacation pay of \$328.00 should have been applied to the week ending November 22, 2008. The employer agrees the claimant should receive full unemployment insurance benefits for the week ending November 29, 2008, because it gave the claimant no vacation pay for that week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 the non-receipt of vacation pay for the one-week period ending November 29, 2008. The representative's decision calculation is incorrect. The claimant received no vacation pay for the one-week period ending November 29, 2008.

DECISION:

The April 15, 2009 reference 01, decision, is reversed. The claimant was not overpaid unemployment insurance benefits in the amount of \$328.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs