

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIE E MARSHALL**  
Claimant

**APPEAL NO. 07A-UI-04454-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO TRIBE OF NEBRASKA  
WINNAVEGAS**  
Employer

**OC: 04/01/07 R: 01  
Claimant: Appellant (2R)**

Iowa Code section 96.5(5) – Severance Pay  
Iowa Code section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

Marie Marshall filed a timely appeal from the April 19, 2007, reference 01, decision that she had been overpaid \$181.00 for the benefit week that ended April 7, 2007 due to receipt or eligibility to receive severance pay. After due notice was issued, a hearing was held on May 16, 2007. Ms. Marshall participated. The employer did not participate. The employer provided a number for the hearing, but the employer representative was not available at that number at the scheduled start of the hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Department Exhibits D-1, D-2 and D-3 into evidence.

**ISSUE:**

Whether the claimant received or was entitled to receive wages in lieu of notice, severance pay, separation, allowance or dismissal pay.

Whether Iowa Workforce Development applied the correct severance pay amount to the correct period.

Whether the claimant has been overpaid \$181.00 for the benefit week ending April 7, 2007.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Marie Marshall was employed by Winnavegas as a full-time table games dealer until April 2, 2007, when the employer laid her off. Ms. Marshall worked her last day on Sunday, April 1, 2007. Ms. Marshall's final rate of pay was \$7.50 per hour. At the time Ms. Marshall separated from the employment, she had no agreement with the employer regarding severance pay. Ms. Marshall's last paycheck was based on gross wages of \$155.00 earned from eight-hour shifts on March 30 and 31 and a four-hour shift on April 4. Ms. Marshall appropriately reported the \$31.00 in wages from the April 1 shift when she made her first weekly report to Iowa Workforce Development. The wages from the March 30 and 31 shifts predated the effective

date of Ms. Marshall's claim for unemployment insurance benefits. Ms. Marshall did not receive severance or any other form of extra pay in connection with the separation from the employment.

The employer made a timely, but erroneous, report to Iowa Workforce Development that Ms. Marshall had received, or was entitled to receive, \$155.00 in severance pay to be applied to the benefit period of March 28 through April 10, 2007. Based on the employer's erroneous report of severance pay, Iowa Workforce Development redetermined Ms. Marshall's benefit eligibility for the benefit week that ended April 7, 2007. The Agency concluded that Ms. Marshall had underreported her wages for the benefit week that ended April 7, 2007 were \$155.00. The Agency concluded that Ms. Marshall's reportable wages for the week ending April 7 were \$186.00, an amount that exceeded Ms. Marshall's weekly benefit amount of \$181.00. Accordingly, the Agency recalculated Ms. Marshall's benefit eligibility for the week ending April 7 to be zero and concluded that Ms. Marshall had been overpaid \$181.00.

Ms. Marshall commenced new employment on April 12 and appropriately reported wages of \$144.00 from the new employment when she made her weekly report to Iowa Workforce Development during the week that ended April 14, 2007. Based on the wages Ms. Marshall reported for that week, the Agency determined that she was eligible for \$82.00 in benefits. However, to commence recovery of the perceived overpayment, the Agency withheld the \$82.00 payment and "offset" it against the overpayment. Ms. Marshall did not continue her claim for benefits beyond the benefit week that ended April 14, 2007.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
  - a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
  - b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
  - c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs "a", "b", or "c", were paid on a retroactive basis for the

same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

871 IAC 24.13(3)c provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

Workforce Development Rule 871 IAC 24.13(1) provides as follows:

Procedures for deducting payments from benefits. Any payment defined under subrules 24.13(2) and 24.13 (3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13 (2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18 (96). The amount of any payment under subrule 24.13 (3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

The greater weight of the evidence in the record establishes that Ms. Marshall did not receive severance pay, dismissal pay, separation allowance, or wages in lieu of notice totaling \$155.00 or any other amount. The evidence establishes that Ms. Marshall was not overpaid \$181.00 for the benefit week that ended April 7, 2007. This matter will be remanded so that a claims representative can take appropriate steps to reverse the \$82.00 offset taken during the benefit week that ended April 14, 2007, and disburse those benefits to Ms. Marshall.

**DECISION:**

The claims representative's April 19, 2007, reference 01, decision is reversed. The claimant has not been overpaid \$181.00 for the benefit week that ended April 7, 2007. This matter will be remanded so that a claims representative can take appropriate steps to reverse the \$82.00 offset taken during the benefit week that ended April 14, 2007, and disburse those benefits to Ms. Marshall.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/kjw