

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOUANN A TAYLOR**  
Claimant

**APPEAL NO. 10A-UI-10470-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUNCHBOX SOLUTIONS INC**  
Employer

**OC: 07/05/09**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed was filed from a representative's decision dated July 23, 2010, reference 03, that held she was overpaid benefits \$159.00 for the week ending June 5, 2010 for incorrectly reporting vacation pay received from Lunchbox Solutions. A telephone hearing was held on September 9, 2010. The claimant participated. The employer did not participate. Claimant Exhibit A was received as evidence.

**ISSUE:**

The issue is whether the claimant is overpaid benefits.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds that: The claimant last worked for her employer on Tuesday, May 25, 2010. The claimant worked Monday through Friday about 6.5 to 7 hours a day. The claimant's payroll statement for the period from May 16, 2010 to May 31 shows she used her final 16.43 hours of PTO during this period.

The employer did not respond to the hearing notice.

**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.

The administrative law judge concludes that the claimant is not overpaid benefits \$159.00 for the week ending June 5, 2010.

The claimant's final pay statement shows she used all of her PTO by the pay period ending May 31, 2010. The claimant did not receive any further employer pay, vacation or otherwise that could be applied to the week ending June 5.

**DECISION:**

The decision of the representative dated July 23, 2010, reference 03, is reversed. The claimant is not overpaid benefits \$15.00.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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