

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ANTHONY R GARR
211 W FRANKLIN
CENTERVILLE IA 52544**

**BARKER COMPANY
PO BOX 478
KEOSAUQUA IA 52565**

**Appeal Number: 06A-UI-04942-JTT
OC: 04/03/05 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant Anthony Garr filed a timely appeal from the May 1, 2006, reference 02, decision that determined he had been overpaid \$87.00 for the benefit week that ended December 31, 2005. After due notice was issued, a hearing was held on May 25, 2006. Mr. Garr participated. Human Resources Payroll Specialist Shirley White represented the employer. The administrative law judge took official notice of the Agency's administrative file. Department Exhibit D-1 was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Anthony Garr is employed by Barker Company and was employed by Barker Company at the time of the employer's most recent temporary shutdown. The shutdown commenced on December 24,

2005, and Mr. Garr and other employees returned to work on January 9, 2006. Mr. Garr was temporarily unemployed during the shutdown and continued his claim for benefits during that time. Mr. Garr's weekly benefit amount is set at \$322.00. The employer did not protest Mr. Garr's claim for benefits during the temporary shutdown. The deadline for protest was January 9.

Two weeks prior to the scheduled shutdown, the employer had notified employees of the dates the employer would be providing Iowa Workforce Development as the dates to which holiday pay should be applied for unemployment insurance purposes. However, Mr. Garr did not receive the notice. Based on the length of his employment with the Barker Company, Mr. Garr was entitled to holiday pay for the Christmas and New Year's holidays. During the benefit week of December 25-31, Mr. Garr reported \$87.00 in holiday pay for the Christmas holiday. During the benefit week of January 1-7, Mr. Garr reported \$88.00 in holiday pay for the New Year's holiday.

On February 28, the employer used the Notice of Claim/Protest Form to notify Iowa Workforce Development that Mr. Garr received \$173.60 in holiday pay during the period of the shut down and to designate the dates to which the pay should be applied. The employer attributes its tardiness in providing the information to Iowa Workforce Development to a backlog of similar documents it had to complete. Since December 25 fell on a Sunday, the employer designated Monday, December 26, as the day to which Mr. Garr's holiday pay should apply for unemployment insurance purposes. New Year's Day 2006 fell on a Sunday. That Sunday would have been the beginning of a new benefit week. Instead of designating Monday, January 2 as the day to which Mr. Garr's holiday pay should apply for unemployment insurance purposes, the employer, for its accounting convenience, designated December 30, 2005. Based on the holiday pay information provided by the employer, the Agency issued a decision that Mr. Garr had been overpaid \$87.00 for the benefit week that ended December 31, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Garr was overpaid \$87.00 for the benefit week that ended December 31, 2005. It does not.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

871 IAC 24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

The procedure by which holiday benefits are deducted from unemployment insurance benefits is addressed in Workforce Development Rule 24.13(1). 871 IAC 24.13(1) provides, in relevant part, as follows:

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 week 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).

In the present case, the employer failed to designate in a timely manner the dates to which the holiday pay should have been applied. In the absence of a designation of dates by the employer, Mr. Garr designated the benefit weeks to which the benefits should be applied by reporting the holiday pay as income received during the benefit week in which each holiday actually fell. This was a logical and reasonable thing for Mr. Garr to do. Mr. Garr's timely designation of the periods to which the holiday pay applied is controlling.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Garr was not overpaid \$87.00 for the benefit week that ended December 31, 2005.

DECISION:

The Agency representative's decision dated May 1, 2006, reference 02, is reversed. The claimant was not overpaid \$87.00 for the benefit week that ended December 31, 2005.

jt/kjw