

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA K DYER
Claimant

APPEAL NO. 11A-UI-07164-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NETWORK IMAGING SOLUTIONS INC
Employer

OC: 12/19/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment
871 IAC 24.13(2)a – Holiday Pay

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated May 20, 2011, reference 02, that held she is overpaid benefits \$169.00 for the two weeks ending January 1, 2011 due to failing to report holiday pay from the employer. A telephone hearing was held on June 22, 2011. The claimant participated. Crystal Dutler, HR Representative, participated for the employer.

ISSUE:

The issue is whether the claimant is overpaid benefits due to receiving holiday pay.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds that: The employer laid-off the claimant and other employee workforce due to a plant shut-down on December 17, 2010. It paid claimant holiday pay of \$152.00 for December 23/24, and the same amount for December 30/31. When claimant claimed for benefits, she reported \$76.00 earnings for the week ending December 25, and no earnings for the week ending January 1, 2011. She received an unemployment benefit of \$220.00 for the week ending December 25, and \$237.00 for the week ending January 1.

Based on the employer protest regarding the holiday payment to claimant, she was entitled to \$144.00 benefit for the week ending December 25, and January 1 that meant she was overpaid \$76.00 and \$93.00 for a total of \$169.00.

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 is overpaid benefits \$169.00 due to receiving holiday pay for the two weeks ending January 1, 2011 from the employer. It appears the claimant did not report the holiday pay, because she did not work the day before the shutdown that made her think she would not get it. She received deductible holiday pay that causes the overpayment, and it is a good faith claimant error for failing to report it.

DECISION:

The decision of the representative dated May 20, 2011, reference 02, is affirmed. The claimant is overpaid benefits \$169.00 for the two weeks ending January 1, 2011 due to receiving holiday pay.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs