

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUG D JENSEN

Claimant

APPEAL NO. 09A-UI-01259-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CYCLE COUNTRY ACCESSORIES CORP

Employer

**OC: 02/03/08 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Doug D. Jensen filed a timely appeal from an unemployment insurance decision dated January 28, 2009, reference 05, that ruled he had been overpaid unemployment insurance benefits in the amount of \$81.00 for the week ending December 27, 2008 for failing to report holiday pay from Cycle Country Accessories Corporation. After due notice was issued, a telephone hearing was held February 27, 2009 with Mr. Jensen participating. Operations Director Joni Brehmer participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Has the claimant been overpaid for failing to report holiday pay?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Doug D. Jensen established a benefit year on February 3, 2008. His weekly benefit amount is \$213.00. For the week ending December 27, 2008 he received ten days of holiday pay in the gross amount of \$133.70. He inadvertently forgot to report the holiday pay when he filed his weekly claim. Had he properly reported it, his gross benefits would have been \$132.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Jensen has been overpaid for failing to report holiday pay. He has. The evidence establishes that Mr. Jensen did not report the holiday pay for the week ending December 27, 2008. Holiday pay is deducted from unemployment insurance benefits as if it had been regular wages. See 871 IAC 24.13(2)a. The amount of the deduction is computed using a formula found at 871 IAC 24.18. Had Mr. Jensen properly reported the holiday pay, he would have received \$132.00 in unemployment insurance benefits, less the state withholding

that he has elected. The Agency is unable to recoup withholding turned over to the Iowa Department of Revenue.

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 states pursuant to section 602.10101.

The claimant has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 28, 2009, reference 05, is affirmed. The claimant has been overpaid by \$81.00 for the week ending December 27, 2008.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css