

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

JAMIE D PLATE
PO BOX 57594
PLEASANT HILL IA 50317

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-00087-DWT
OC 05/11/03 R 02
Claimant: Appellant (1)

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 are 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 96.5-5-b – Deductible Worker's Compensation
Section 96-3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Jamie D. Plate (claimant) appealed a representative's December 26, 2003 decision (reference 03) that concluded she had been overpaid \$170.00 in benefits for the week ending November 8, 2003 because she had not reported all the deductible payments she received for that week. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled on January 27, 2003. Prior to the hearing, the claimant indicated she would not be available and asked that a decision be made based on a written statement she submitted. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant properly report all the deductible payments she received for the week ending November 8, 2003?

Has the claimant been overpaid \$170.00 in benefits for the week ending November 8, 2003?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of May 11, 2003. She filed a claim for benefits for the week ending November 8, 2003. She reported she had earned \$195.00 in wages this week. The claimant received \$170.00 in benefits for the week ending November 8, 2003.

When the claimant received her check from StatStaff, the employer paid her a total of \$418.48, which included worker's compensation pay for health problems the claimant experienced because of the employer's work environment. During the week ending November 8, the claimant worked seven hours on November 3. She worked six hours on November 4 before she went to the emergency room for health problems she had due to the smoke in the employer's office. The claimant did not work on November 5 because of health reasons. On November 6, the claimant worked two hours because she had a doctor's appointment in the morning.

After the claimant received the employer's check, she reported on November 17 to a Department representative the worker's compensation payment she had received. The Department did not apply that to any subsequent week the claimant received benefits.

REASONING AND CONCLUSIONS OF LAW:

Compensation for temporary disability under the worker's compensation law is considered wages for unemployment insurance purposes and must be deducted from a claimant's maximum weekly benefit amount. Iowa Code §96.5-5-b. The claimant correctly reported wages she actually earned, \$195.00, during the week ending November 8, 2003. When she filed her weekly claim she did not know the employer would pay her worker's compensation. The \$418.48 the claimant ultimately received included the previously reported \$195.00 in wages the claimant earned. It is not known if the remaining amount \$223.48 constitutes lost wages the claimant could have earned if she had not gone to the emergency room or if this includes emergency room and doctor's fees. Since the claimant did not provide that information and she has the burden to establish she has not been overpaid \$170.00 in benefits, it must be assumed the claimant's loss in wages that week equal or exceed gross wages of \$170.00.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant has been overpaid \$170.00 in benefits for the week ending November 8, 2003.

DECISION:

The representative's December 26, 2003 decision (reference 03) is affirmed. The claimant has been overpaid \$170.00 in unemployment insurance benefits for the week ending November 8, 2003 because she received temporary disability worker's compensation benefits that equaled or exceeded \$170.00 during this week.

dlw/kjf