

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSE G MADRIGAL
Claimant

OMG MIDWEST INC
Employer

APPEAL 18A-UI-00981-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
Claimant: Appellant (2)

Iowa Code § 96.5(7) – Vacation Pay
Iowa Code § 96.6(3) – Appeals
Iowa Admin. Code r. 871-24.19(1) – Prior adjudication

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 10, 2018 (reference 05) unemployment insurance decision that found claimant was only eligible to receive a reduced unemployment benefit for the week-ending December 17, 2016 because he received vacation pay, wages in lieu of notice, severance pay, separation allowance or dismissal pay. Due notice was issued for the hearing. The telephone hearing was held on February 14, 2018. Claimant participated personally. Sindy Madrigal participated as a witness on behalf of claimant. Language interpretation services were provided to both witnesses by CTS Language Link. Claimant's Exhibits A and B were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the issue of wages, vacation pay, and severance pay for the week-ending December 17, 2016 previously adjudicated?

FINDINGS OF FACT:

Having reviewed the claimant's administrative record, the administrative law judge finds:

The claimant's administrative records establish that a decision dated February 16, 2017 (reference 03) was issued finding that claimant was overpaid benefits in the net amount of \$282.00 from December 4, 2016 through December 31, 2016 due to claimant incorrectly reporting wages, vacation, and severance pay from OMG Midwest Inc. The fact-finding documents for the decision dated February 16, 2017 (reference 03) establish that the representative reviewed wages, vacation pay and severance pay for the period of November 27, 2016 through December 31, 2016 and determined that an overpayment of unemployment insurance benefits in the amount of \$762.00 was paid to claimant and an underpayment of unemployment insurance benefits in the amount of \$480.00 was due to claimant. This resulted in a net overpayment of benefits of \$282.00. No appeal was filed from this decision and it became final agency action.

The claimant's administrative records establish that he has since paid the net overpayment amount of \$282.00. See Exhibit A. Payment of the net overpayment of \$282.00 was paid by virtue of an offset for week-ending April 1, 2017 during his November 27, 2016 claim year and by virtue of a direct payment on May 2, 2017. See Exhibit A.

Approximately eleven months after the February 16, 2017 (reference 03) decision, another decision was issued by a representative which reviewed the same time period of November 27, 2016 through December 31, 2016 with regard to wages, vacation pay, and severance pay. The resulting decision at issue today was issued and claimant filed a timely appeal. The claimant's administrative records establish that an additional alleged overpayment was offset during the week-ending January 13, 2018 and week-ending January 20, 2018 during his December 3, 2017 claim year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The wages, vacation pay, and severance pay issue for week-ending December 17, 2016 during claimant's November 27, 2016 claim year has been previously adjudicated in the February 16, 2017 (reference 03) decision. No appeal was filed from the February 16, 2017 (reference 03) decision and it became final agency action. Accordingly, the January 10, 2018 (reference 05) decision is reversed because this issue was previously adjudicated.

Iowa Code § 96.6(3)(b) provides:

Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Iowa Admin. Code r. 871-24.19(1) provides:

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

The vacation pay issue presented was previously resolved in the representative's decision that was dated February 16, 2017 (reference 03). Claimant did not appeal that decision and it became final. As such, this current decision, referring to the same vacation pay issue, is reversed. The February 16, 2017 (reference 03) decision remains in effect.

DECISION:

The January 10, 2018 (reference 05) decision is reversed since it is inconsistent with the prior decision regarding this same issue, which has become final.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs