

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA K WEMETT
Claimant

APPEAL NO: 09A-UI-16207-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/03/08
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed a representative's October 20, 2009 decision (reference 01) that concluded she had been overpaid \$241.00 in benefits she received for the week ending August 3, 2008, because she did not report or incorrectly reported vacation pay that should be attributed to this week. A telephone hearing was held on November 16, 2009. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Has the claimant been overpaid \$241.00 in benefits for the week ending August 9, 2008?

FINDINGS OF FACT:

The claimant's last day of work for Ikon Office Solutions, Inc. was July 31, 2008. The claimant understood she would receive a week of vacation pay. After the claimant informed a Workforce representative about the week of vacation pay, she did not understand she needed to report this amount when she called in her weekly claim. The claimant understood the representative would take care of the vacation pay issue.

The claimant filed a claim for benefits for the week ending August 9, 2008. She did not report the amount of vacation she was eligible to receive. The claimant received her maximum weekly benefit amount of \$241.00 for this week. Ikon Office Solutions, Inc. paid the claimant her vacation pay of \$510.00 on August 22, 2008, by directly depositing this amount into the claimant's bank account.

REASONING AND CONCLUSIONS OF LAW:

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 section 96.3-7.

When an employer makes a vacation payment or becomes obligated to make a payment, the vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. Iowa Code section 96.5-7, 871 IAC 24.16.

Since there is no evidence the employer designated the period of time the vacation pay should be attributed and the claimant filed a claim immediately after she was laid off, the vacation pay must be attributed to the week ending August 9, 2008. 871 IAC 24.26(3). Therefore, the claimant is not eligible to receive benefits for this week. Since the vacation payment of \$510.00 exceeds the claimant's weekly benefit amount of \$241.00, the claimant is not eligible to receive any benefits for this week.

The claimant is not at fault in receiving the overpayment because she reasonably assumed a representative would report her vacation pay and make sure the claimant received the correct benefits.

As of the date of the decision, the Department has already recouped \$120.50 from benefits the claimant was legally entitled to receive. She has an outstanding balance of \$120.50 to pay back to the Department.

DECISION:

The representative's October 20, 2009 decision (reference 01) is affirmed. The claimant received \$510.00 in vacation pay that must be attributed to the week ending August 9, 2008. The vacation pay was not properly reported, which resulted in a \$241.00 overpayment because the claimant was not legally entitled to receive benefits for this week. The claimant is not at fault in receiving the overpayment because she reasonably assumed a representative would report her vacation payment on her behalf. As of the date of this decision the claimant has an outstanding balance of \$120.50 yet to pay back to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs