

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

JAY R ESPY  
19031 SUNSHINE RD  
CENTERVILLE IA 52544

BARKER COMPANY LIMITED  
PO BOX 478  
KEOSAUQUA IA 52565

Appeal Number: 04A-UI-02646-RT  
OC: 12/22/02 R: 03  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-7 – Vacation Pay  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Jay R. Espy, filed a timely appeal from an unemployment insurance decision dated March 4, 2004, reference 01, determining that he was overpaid unemployment insurance benefits in the amount of \$96.00 for one week between November 23, 2003 and November 29, 2003, because he failed to report or incorrectly reported vacation pay. After due notice was issued, a telephone hearing was held on March 31, 2004, with the claimant participating. Richard Dietzman, Plant Manager, participated in the hearing for the employer, Barker Company Limited. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Department Exhibit One was admitted into evidence. Although the hearing was scheduled to begin at 10:00 a.m., the parties consented to start the hearing early which began at 9:48 a.m. because

the administrative law judge anticipated a tornado drill in which he would have to evacuate the building sometime shortly after 10:00 a.m. The hearing ended when the record was closed at 10:03 a.m.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant was at all material times hereto a full-time employee with the employer. The claimant received holiday pay for the day of Thanksgiving, November 27, 2003. The claimant had in advance requested to have the day off the prior day, November 26, 2003. However, the employer, after the claimant's request for a vacation day, laid the employee's off for a period of time. The claimant then cancelled his vacation day request. The claimant, however, received both vacation pay in the amount of \$96.00 and holiday pay in the amount of \$96.00 as shown at Department Exhibit One. However, the claimant had arranged with the employer and Iowa Workforce Development not to report the vacation pay that week, but to report it later. For benefit week ending January 10, 2004, the claimant took his vacation day and reported the vacation pay but did not get paid at that time for his vacation day having already been paid for it. The claimant reported this to Iowa Workforce Development and the reporting of his vacation pay reduced his unemployment insurance benefits for that week appropriately.

Pursuant to his claim for unemployment insurance benefits filed effective for a prior benefit year beginning December 22, 2002 and reopening his claim for benefits effective November 23, 2003, the claimant received unemployment insurance benefits in the amount of \$561.00 as follows: \$269.00 for benefit week ending November 29, 2003, properly reporting \$96.00 of holiday pay for Thanksgiving and \$292.00 for benefit week ending December 6, 2003 which was his full weekly benefit. The claimant was laid off during this period of time. The claimant then filed for a new benefit year effective December 21, 2003 and received unemployment insurance benefits in the amount of \$1,172.00 as follows: \$184.00 for benefit week ending December 27, 2003 (including special unemployment insurance benefits payments in the amount of \$3.00 which was offset against the overpayment herein in the amount of \$3.00, \$184.00 for benefit week ending January 3, 2004 reporting earnings of \$191.00 for that week, \$204.00 for benefit week ending January 10, 2004, reporting vacation pay in the amount of \$96.00 which he took that week, but which had been paid earlier as noted above, and \$300.00 per week for two weeks, benefit weeks ending February 21, 2004 and February 28, 2004. The claimant is now back at work. The claimant is presently shown as overpaid \$93.00 having offset \$3.00 as noted above against the overpayment herein in the amount of \$96.00.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant received vacation pay and holiday pay and, if so, whether it was properly deducted for the correct period. The claimant did receive vacation pay and holiday pay and it was reported by the claimant for the correct period.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

Iowa Code Section 96.5-7 provides:

An individual shall be disqualified for benefits: ...

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

The administrative law judge concludes that the claimant received holiday pay in the amount of \$96.00 for November 27, 2003 and this was properly reported and reduced the claimant's unemployment insurance benefits appropriately for a prior benefit year effective December 22, 2002. The claimant then received vacation pay in the amount of \$96.00 for one day during benefit week ending January 10, 2004 and this was properly reported by the claimant and it appropriately reduced his benefits for that week. Both the claimant and the employer's witness, Richard Dietzman, Plant Manager, testified that the claimant had applied for vacation for November 26, 2003, the first day before Thanksgiving, but after he had applied for such vacation, the plant was laid off and so the claimant cancelled his vacation request, but was nevertheless paid vacation pay for that day as well as holiday pay for the next day. The claimant agreed with the employer and Iowa Workforce Development to take his vacation day in benefit week ending January 10, 2004 and report his vacation pay for that week which the claimant did and it reduced his benefits. This agreement is not reflected in the employer's protest designating vacation pay of \$96.00 for November 26, 2003 and holiday pay for November 27, 2003. However, the witnesses testified and the administrative law judge concludes that their agreement supercedes this designation. Accordingly, the administrative law judge concludes that the claimant did receive vacation pay and holiday pay as noted above and he did properly report those payments and they were correctly deducted from his benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits periodically, but were reduced appropriately by his holiday pay and vacation pay as noted above. Accordingly, the administrative law judge concludes that the claimant is not overpaid unemployment insurance benefits in the amount of \$96.00 for one week between November 23, 2003 and November 29, 2003 because of vacation pay because he properly reported it later and it was deducted from other benefits for benefit week ending January 10, 2004. The \$3.00 already offset against this alleged overpayment should be refunded to the claimant.

DECISION:

The representative's decision dated March 4, 2004, reference 01, is reversed. The claimant, Jay R. Espy, is not overpaid unemployment insurance benefits in the amount of \$96.00 for one week between November 23, 2003 and November 29, 2003 because he properly reported his holiday pay and vacation pay and it appropriately reduced his benefits appropriately. The \$3.00 already offset against this alleged overpayment should be refunded to the claimant.

kjf/b