

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

JENNIFER M PORTER
3114 – 62ND ST
DES MOINES IA 50322 3504

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-04055-DWT
OC: 03/05/06 R: 02
Claimant: Appellant (3)

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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Jennifer M. Porter (claimant) appealed a representative's April 3, 2006 decision (reference 02) that concluded she had been overpaid \$216.00 in benefits she received for the week ending March 18, 2006 because she received a vacation payment that reduced her maximum weekly benefit amount. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on May 1, 2006. 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 any benefits for the week ending March 18, 2006?

FINDINGS OF FACT:

The claimant's last day of work for the employer was December 30, 2005, when her son was born. The claimant established a claim for unemployment insurance benefits during the week of March 5, 2006, or after her maternity leave ended.

On March 10, 2006, the employer informed the claimant she was unable to return to work right away. The claimant then asked the employer to pay the claimant her two-weeks' of vacation. The employer issued a vacation pay check to the claimant on March 10 for \$1,152.00. The employer, however, however, inadvertently failed to use the claimant's correct hourly pay. As a result of this mistake, the employer issued another vacation pay check to the claimant on March 17 for \$144.00.

When the employer reported the vacation payment to the Department, the employer indicated it was for the period March 10 through 17, 2006. The claimant filed a claim for the week ending March 18. She received her maximum weekly benefit amount of \$349.00 for this week.

REASONING AND CONCLUSIONS OF LAW:

When a claimant receives or is entitled to receive vacation payment, the amount must be treated as wages and reduces a claimant's maximum weekly benefit amount. Iowa Code § 96.5-7. When an employer properly notifies the Department about a vacation payment, it may designate the period the vacation payment should be attributed. 871 IAC 24.16(2).

Since the employer designated the vacation payment to be attributed to March 10 through 17, the 2/7 of the payment should be attributed to the week ending March 11 and 5/7 attributed to the week ending March 18. This means \$370.00 of the vacation payment should be attributed to the week ending March 11 and \$926.00 should be attributed to the week ending March 18, 2006. The \$926.00 attributed to the week ending March 18 is more than the claimant's maximum weekly benefit amount. Therefore, the claimant is not eligible to receive benefits for the week ending March 18, 2006.

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. Even though the claimant is not at fault, she has been overpaid \$349.00 in benefits she received for the week ending March 18, 2006.

DECISION:

The representative's April 3, 2006 decision (reference 02) is modified adversely to the claimant. The claimant is not eligible to receive benefits for the week ending March 18, 2006 because the vacation payment she received for this week exceeds her maximum weekly benefit amount. The claimant has been overpaid and must repay a total of \$349.00, not \$216.00.

dlw/pjs