

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELANIE N ABBOTT
Claimant

HARVEYS BR MANAGEMENT CO INC
Employer

APPEAL NO. 15A-UI-01447-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/06/12
Claimant: Appellant (1)**

Section 96.5-5 – Worker’s Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 27, 2015, reference 09, which held claimant ineligible for unemployment benefits. After due notice, a telephone conference hearing was scheduled for and held on March 3, 2015. Claimant participated and was represented by attorney Brian Rhoten. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant is disqualified for benefits due to the receipt of Worker’s Compensation benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant received unemployment benefits from the dates of July 7, 2012 to April 6, 2013. Claimant was terminated from work due to accumulating too many points as a result of a work-related injury.

Claimant received unemployment payments during this time period of \$14,766.62. Claimant received workers compensation Temporary Total disability payments in excess of claimant’s weekly benefit amount. Said benefits received through Workers Compensation were argued by claimant’s attorney to include attorney’s fees and costs.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
 - a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Claimant's benefits are to be reduced by the amount of Claimant's workers compensation Temporary Total disability payments. Claimant has admitted to receiving deductible Workers' Compensation benefits in an amount exceeding her unemployment benefits. As such, unemployment benefits received are considered to have been overpaid.

DECISION:

The decision of the representative dated January 27, 2015, reference 09, is affirmed. Unemployment benefits received are considered to have been overpaid.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/can