

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYTIE A CHAPMAN
Claimant

APPEAL NO: 15A-UI-00046-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/16/14
Claimant: Appellant (4)

Iowa Code § 96.5(7) – Vacation Pay
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 26, 2014 determination (reference 03) that held she had been overpaid \$940 in benefits for the week ending November 22, 2014. A hearing was scheduled on January 27, 2015. The claimant did not respond to the hearing notice or participate at the hearing. Based on the administrative record and the law, the administrative law judge concludes the claimant was overpaid \$94 in benefits for the week ending November 22, 2014, not \$940.

ISSUES:

Did the claimant receive vacation pay that should be attributed to the week ending November 22, 2014?

Has the claimant been overpaid any benefits for the week ending November 22, 2014?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 16, 2014. Her maximum weekly benefit amount is \$140. After the claimant established her claim she began working for another employer. The claimant's last day of work for this subsequent employer was November 16, 2014. This employer paid the claimant vacation pay of \$94 on December 1, 2014.

The claimant filed an additional claim during the week of November 16. She filed a weekly claim for benefits for the week ending November 22, 2014. She reported wages of \$37 for this week. The claimant did not report vacation pay this week because she had not received any vacation pay until December 1. The claimant received a gross benefit payment of \$138 for this week.

REASONING AND CONCLUSIONS OF LAW:

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 timely designate the dates to which vacation pay applies, 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. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5(7), 871 IAC 24.16.

In this case the \$94 of vacation pay must be attributed to the week ending November 22, 2014. This means the claimant has been overpaid \$94 in benefits for this week.

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).

DECISION:

The representative's December 26, 2014 determination (reference 03) is modified in the claimant's favor. The claimant received vacation pay of \$94 that must be attributed to the week ending November 22, 2014. The claimant has been overpaid \$94 in benefits **NOT** \$940.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs