

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R DONATH
Claimant

APPEAL NO. 07A-UI-04260-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MI-T-M CORPORATION
Employer

**OC: 01-07-07 R: 04
Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay/Vacation Deduction
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Mr. Donath filed an appeal from a decision of a representative dated April 23, 2007, reference 01, which held the claimant liable to repay \$128.00 for the week between April 1, 2007 and April 7, 2007 finding that the claimant failed to report correctly severance pay from MI-T-M Corporation. After due notice, a telephone conference hearing was scheduled for and held on May 14, 2007. The claimant participated personally. Exhibits One and Two were received into evidence.

ISSUE:

The issues in this matter are whether the claimant properly reported severance/vacation pay and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by MI-T-M Corporation from February 23 until April 2, 2007 when his employment. Mr. Donath worked as a utility worker at the rate of \$12.83 per hour. At the conclusion of his employment, Mr. Donath was issued an additional company paycheck in the amount of \$128.00 for 10 hours of work he performed for the company on his last day, April 2, 2007. Although Mr. Donath correctly reported the nature of the remuneration to Iowa Workforce Development, the pay was incorrectly reported by the employer. Mr. Donath's original claim date was January 7, 2007 for the period between April 1, 2007 and April 7, 2007. Mr. Donath claimed and received unemployment insurance benefits based upon his partial unemployment at that time.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that Mr. Donath was not issued severance or vacation pay for the period between April 1, 2007 and April 7, 2007. The evidence in the record establishes that Mr. Donath performed services for 10 hours for MI-T-M Corporation at the rate of \$12.83 per hour and was, therefore, issued a paycheck for

that week for wages in the amount of \$128.00, which he correctly reported under section 96.5-a of the employment security law.

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.

Based upon the evidence in the record, the administrative law judge finds that the claimant has not been overpaid unemployment insurance benefits in the amount of \$128.00 as he correctly reported the remuneration he received from this employer as wages for the period in question.

DECISION:

The fact-finder's decision dated April 23, 2007, reference 01, is reversed. The claimant correctly reported wages for the period between April 1, 2007 and April 7, 2007 and has not been overpaid unemployment insurance benefits in the amount of \$128.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/pjs