

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NHAN T DAO

Claimant

IAC IOWA CITY LLC

Employer

APPEAL NO. 14A-UI-07044-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/13

Claimant: Appellant (2)

Section 96.3-7 – Recovery of Overpayment
871 IAC 24.13(2)a – Holiday Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated June 26, 2014, reference 02, that held he was overpaid benefits \$117 for the week ending January 4, 2014 due to receiving holiday pay. A hearing was held on July 31, 2014. The claimant participated. The employer did not participate. Official Notice was taken of claimant appeal documents.

ISSUE:

Whether claimant is overpaid unemployment benefits due to receiving holiday pay.

FINDINGS OF FACT:

The administrative law judge having heard the claimant testimony and having considered the evidence in the record finds that: The claimant last worked for the employer on December 21, 2013 leading to a holiday lay-off period. The employer paid claimant \$358 for three holidays for the week ending December 29, 2013 and \$239 for two holidays the week ending January 4, 2014. Claimant correctly reported this holiday pay when claiming benefits for the two weeks ending January 4, 2014.

The employer representative reported claimant was paid \$358 holiday pay for the week ending January 4, 2014; this is in error as shown by claimant pay stubs.

The employer did not participate in this hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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 claimant did receive \$239 holiday pay from the employer for the week of January 4, 2014 that does not cause a benefit overpayment.

Claimant correctly reported his holiday pay for the week ending January 4, 2014 and he received the correct unemployment benefit. The employer representative made a mistake when it protested the holiday pay amount.

DECISION:

The decision of the representative dated June 26, 2014, reference 02, is reversed. The claimant is not overpaid benefits of \$117 for the week ending January 4, 2014.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs