

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L BREWBAKER-HILLS
Claimant

APPEAL NO: 17A-UI-00197-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/27/16
Claimant: Appellant (2)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated January 4, 2017, reference 03, that concluded the claimant was overpaid unemployment insurance benefits as a result of a disqualification decision. After a hearing notice was mailed to the claimant's last-known addresses of record, a telephone hearing was held on January 30, 2017. The claimant participated personally. April Baldwin, Human Resources Specialist, participated in the hearing. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on December 2, 2016, and received vacation pay in the amount of \$218.00 based upon a rate of pay at \$17.00 per hour. The employer did designate the period of time to which the vacation pay was to be applied but inadvertently used incorrect numbers for the number of vacation hours and gross amount of vacation pay. Later, the employer corrected the notice of claim to correctly reflect the vacation pay. The claimant filed for unemployment insurance benefits with an effective date of November 27, 2016. Her weekly benefit amount is \$447.00. The claimant's weekly benefit amount less the vacation pay is \$229.00. For the week ending December 10, 2016, the claimant was paid \$229.00 in unemployment insurance benefits.

For the week ending December 31, 2016, the agency offset \$136.00 in unemployment insurance benefits for the week ending December 10, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was not overpaid unemployment insurance benefits.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

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) (a) 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 employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge concludes that the claimant was not overpaid unemployment insurance benefits. The claimant received reduced benefits for the week ending December 10, 2016. Later the agency sought to reduce them further. There is no factual basis to reduce the claimant's benefits further. The correct amount of unemployment insurance benefits for the week ending December 10, 2016, is \$229.00.

DECISION:

The decision of the representative dated January 4, 2017, reference 03, is reversed. The claimant was not overpaid unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs