

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**STACY R DIX  
1448 JACKSON ST  
DUBUQUE IA 52001**

**APAC CUSTOMER SERVICES  
C/o TALX UC AND SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-01121-B4T  
OC: 11/02/03 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-7 – Whether the Claimant Reported or Incorrectly Reported Vacation Pay  
Section 96.3-7 – Whether Claimant is Overpaid  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tracy R. Dix appealed from an unemployment insurance decision dated December 2, 2003, reference 01, that held, in effect, the claimant was overpaid benefits in the amount of \$129.00 for the one week between November 2, 2003 and November 8, 2003 because she failed to report or incorrectly reported vacation pay from APAC Customer Services of Iowa, L.L.C.

A telephone conference hearing was scheduled and held on February 18, 2004 pursuant to due notice. Stacy R. Dix participated. Rose Walton, Administrative Assistant participated on behalf of APAC Customer Services of Iowa, L.L.C.

Claimant's Exhibit A was admitted into evidence. Official notice was taken of the unemployment insurance decision bearing reference 01 together with the pages attached thereto (11 pages in all).

#### FINDINGS OF FACT:

##### Timeliness of Appeal Issue

Stacy R. Dix filed an initial claim for benefits having an effective date of November 2, 2003. Subsequently, an unemployment insurance decision was dated and mailed to the parties of record on December 2, 2003. The claimant received a copy of the decision in a timely fashion and made a reasonable effort to contact the Workforce Development Department Appeals Section and other sections of the department to no avail. The claimant was disconnected on several occasions and eventually contacted a local office for assistance. The claimant had filed appeals with the Appeal Section, which were not received. Subsequently, Jane Becker, Workforce Advisor in Dubuque, Iowa advised the claimant on filing an appeal, which was eventually accomplished on February 4, 2004 as shown by the faxed date on Exhibit A admitted into evidence.

The administrative law judge concludes that a timely appeal has been filed on behalf of the claimant, and the Workforce Development Department has jurisdiction of the parties necessary to enter upon a determination relating to the issue concerning whether or not the claimant properly reported vacation pay and was overpaid benefits.

##### Overpayment of Benefit Issue

An examination of the entire record in this matter including the testimony of both parties established that the claimant did in fact receive wages in the amount of \$26.00 for portions of two days work during the benefit week ending November 8, 2003. In addition, the claimant received \$129.00 in vacation pay the following week for the days that she was laid off during the benefit week ending November 8, 2003. The claimant's last day of work on the job was November 4, 2003 at which time she was laid off for the remainder of the workweek ending November 8, 2003.

The total amount received by the claimant would amount to \$217.00 and would result in an amount of \$88.00 to which she would have been entitled to receive. The claimant received \$217.00 for the benefit week ending November 8, 2003 and was therefore overpaid benefits in the amount of \$129.00 due to the wages and the vacation pay that she had received. The overpayment amount of \$129.00 was offset by the Workforce Development Department during the benefit week ending January 17, 2004.

The employer was mailed a notice of claim and filed a protest. The employer did not provide information regarding vacation pay or wages that had been paid to the claimant during that particular benefit week.

## REASONING AND CONCLUSIONS OF LAW:

### Timeliness of Appeal Issue

Iowa Code Section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The evidence in the record establishes that the claimant filed a timely appeal to the decision under consideration. The Workforce Development Department and/or the Appeals Section did not receive and document the filing of the claimant's letter of appeal. In addition, the claimant made more than a reasonable effort to contact the Appeals Section and other sections of the Workforce Development Department to no avail in order to comply with the requirement of filing a timely appeal by December 12, 2003. The administrative law judge concludes that the claimant made a more than reasonable effort to file a timely appeal to the decision under consideration and the Workforce Development Department has jurisdiction of the parties and of the subject matter necessary to enter upon a determination relating to vacation pay.

Iowa Code Section 96.5-7 provides:

An individual shall be disqualified for benefits: ...

#### 7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of

vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

871 IAC 24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

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.

The evidence in the record clearly establishes the claimant did receive wages in the amount of \$26.00 and vacation pay in the amount of \$129.00 that should be properly applied to the benefit week ending November 8, 2003. The total amount applied to the benefit week ending November 8, 2003 would be \$217.00 resulting in an entitlement of benefits to the claimant in the amount of \$88.00

The claimant received benefits totaling \$217.00 for the benefit week ending November 8, 2003 and was therefore overpaid benefits in the amount of \$129.00. Said amount of \$129.00 was recovered by the department by deducting said amount for the unemployment insurance due to the claimant for the benefit week ending January 17, 2004.

The administrative law judge concludes that the decision dated December 2, 2003, reference 01, that held the claimant was overpaid benefits in the amount of \$129.00 for the one week between November 2, 2003 and November 8, 2003 should be affirmed within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

#### DECISION:

Stacy R. Dix filed a timely appeal to the decision under consideration and the decision dated December 2, 2003, reference 01, is affirmed. Stacy R. Dix was overpaid benefits in the amount of \$129.00 for the one week between November 2, 2003 and November 18, 2003. Said amount has been recovered by an offset during the benefit week ending January 17, 2004.

kjf/b