

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

TRUDY J DIETZE  
PO BOX 32  
MILLERSBURG IA 52308-0032

THE UNIVERSITY OF IOWA  
c/o DAVE BURGEON EMP REL  
121 "R" UNIV SVC BLDG  
IOWA CITY IA 52242

Appeal Number: 06A-UI-06187-JTT  
OC: 05/07/06 R: 03  
Claimant: Appellant (2)

**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, 4th 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 96.3(7) – Overpayment of Benefits  
Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Trudy Dietze filed a timely appeal from the June 2, 2006, reference 02, decision that concluded she had been overpaid unemployment insurance benefits in the amount of \$216.00 for one week between May 5, 2006 and May 13, 2006 because she failed to report or incorrectly reported vacation pay from the University of Iowa. After due notice was issued, a hearing was held on June 16, 2006. Ms. Dietze participated in the hearing. David Burgeon, Employee & Labor Relations, represented the employer. The administrative law judge took official notice of the Agency's administrative file. The parties waived formal notice of the hearing in this matter so that it could be consolidated with the hearing on Appeal Number 06A-UI-05632-JTT. The administrative law judge hereby takes official notice of the decision entered in that matter.

FINDINGS OF FACT:

Trudy Dietze separated from her employment with the University of Iowa on May 4, 2006 and established a claim for benefits that was effective May 7, 2006. The employer erroneously indicated in its protest that Ms. Dietze was paid vacation pay of \$323.84 for the period of May 4, 2006 through May 11, 2006. Due to a clerical error, Ms. Dietze did not, in fact, receive vacation pay and will not receive vacation pay until July 1, 2006, at which time she will be paid \$179.89.

REASONING AND CONCLUSIONS OF LAW:

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.

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 employer's right to designate the period to which vacation pay is to be applied presupposes that payment has been made or will be made within a reasonable period and that the information the employer provides to Iowa Workforce Development is reasonably accurate. That is not the case here. The employer has not, in fact, provided Ms. Dietze with accrued vacation pay and has erroneously reported that fact to Iowa Workforce Development, along with erroneously overstating the amount due to Ms. Dietze.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$216.00 pursuant to Iowa Code section 96.3(7).

#### DECISION:

The June 2, 2006, reference 02, decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$216.00.

jt/kkf