

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**REVISED**  
DECISION OF THE ADMINISTRATIVE LAW JUDGE

**JEENA LYNCH  
1044 PURDY STREET  
JESUP, IA 50648**

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS AND RECOVERY  
JENIFER LARA, INVESTIGATOR**

JONI BENSON, IWD  
NICK OLIVENCIA, IWD

**Appeal Number: 15IWDUI157  
OC: 7/6/14  
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 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 the department. 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)

June 24, 2015

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(Decision Dated & Mailed)

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### STATEMENT OF THE CASE

Jeena Lynch filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated March 13, 2015 (reference 05). In this decision, the Department determined that Lynch was overpaid \$318 in unemployment insurance benefits for the week of July 13 through July 19, 2014. The decision states that the overpayment resulted from the Appellant failing to report wages earned with Cedar Falls Community Credit Union.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on May 1, 2015 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on May 4, 2015. On June 1, 2015, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jenifer Lara represented the Department and presented testimony.

Appellant Jeena Lynch appeared and presented testimony. Exhibits A through G were submitted by the Department and admitted into the record as evidence. Exhibits 1 through 12 were submitted by the Appellant and admitted into the record as evidence.

### **ISSUE**

Whether the Department correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.<sup>1</sup>

### **FINDINGS OF FACT**

Jeena Lynch filed a claim for unemployment insurance benefits with an effective date of July 6, 2014. Lynch's weekly benefit amount was \$318. (Exh. A-2, D).

The Department sent out a Wage Cross Match form to Lynch's employer, Cedar Falls Community Credit Union, for the third quarter of 2014. Helen Pearce filled out the form on behalf of Lynch's employer and returned it to the Department. The employer reported that Lynch worked 39 hours during the week of July 6 through July 12, 2014 and received \$465 in regular wages and \$1,295 in non-regular wages. The employer noted on the form, "Jeena had PTO hours of 107.95 that were paid. PTO Pay \$1295.40." The form also showed that Lynch's hourly wage rate was \$12 and that her last day worked was July 11, 2014. (Exh. A3-4; Lara testimony).

When making claims, Lynch reported earnings in excess of \$999 for the week ending July 12, 2014. Lynch did not report earning any wages during the week ending July 19, 2014. Lynch received unemployment insurance benefits for the week ending July 19 in the amount of \$318. (Exh. A-2).

Based on the Department's regulation providing that if an employer does not designate the time period of vacation pay paid at the end of employment the entire amount is applied to the one-week period starting on the first workday following the last day worked, the Department applied the PTO payout that Lynch received to the dates of July 12 through July 16, representing the five work days after her last day of employment.<sup>2</sup> Dividing \$1,295 by five work days, the Department applied \$259, or one day, of the PTO payout to the week ending July 12, 2014 and \$1,036, or four days, of the PTO payout to the week ending July 19, 2014. Based on its conclusion that Lynch earned \$1,036 during the week ending July 19, the Department determined that Lynch was overpaid unemployment insurance benefits in the amount of \$318 during that week. (Lara testimony).

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<sup>1</sup> The issue listed on the hearing notice is whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits. Both parties agreed at hearing that this issue is incorrect and that the correct issue is listed above.

<sup>2</sup> The Department began the time period on July 12 based on the fact that Lynch's employer has Saturday hours. (Lara testimony).

The Department issued a decision dated March 13, 2015 in which it determined that Lynch was overpaid by \$318. Lynch appealed the decision. (Exh. D, E).

### **REASONING AND CONCLUSIONS OF LAW**

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.<sup>3</sup>

The issue here is whether the Department correctly classified the PTO payout that Lynch received from her employer as wages and whether it properly applied the payout to the five work days after her last day of work. Under Iowa law, if an employer makes a payment of vacation pay or pay in lieu of vacation, the employer may designate to the Department the period to which the payment should be allocated. In order for the employer's designation to be effective, it must be made to the Department in writing within 10 calendar days after the employer is notified of the individual's claim.<sup>4</sup> Generally speaking, vacation pay is deemed wages. Individuals who receive a vacation payout at the end of their employment are ineligible for benefits for any week in which the payout equals or exceeds the individual's weekly benefit amount.<sup>5</sup>

If an employer does not designate the time period to which the vacation payment should apply,

[p]ayments 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.<sup>6</sup>

The Department's regulations make clear that if the employer does not designate the time period of the vacation pay, the entire amount is applied to the one-week period starting on the first workday following the last day worked. Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the Department to eight hours for a normal workday and five workdays for a normal workweek.<sup>7</sup>

While Lynch's employer classified her leave as PTO rather than vacation, the Department's regulations provide that excused personal leave, which is personal leave

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<sup>3</sup> Iowa Code § 96.3(7)(a) (2015).

<sup>4</sup> Iowa Code § 96.5(7)(b) (2015).

<sup>5</sup> Iowa Code § 96.5(7)(a), (c) (2015).

<sup>6</sup> Iowa Code § 96.5(7)(d) (2015).

<sup>7</sup> 871 Iowa Administrative Code (IAC) 24.16(3)-(4).

granted to an employee for absence from the job because of personal reasons, is treated as vacation and fully deductible from unemployment insurance benefits.<sup>8</sup>

Lynch's employer did not designate the time period to which her PTO payout should apply, therefore the Department correctly determined that the payout should be spread out over the week following the last day worked. Under this analysis, Lynch was attributed wages in the amount of \$1,036 for the week ending July 19, 2014. Lynch was paid \$318 in unemployment insurance benefits for that week. Under Iowa law, the PTO payout is fully deductible from Lynch's unemployment insurance benefits, therefore Lynch was overpaid the \$318 received during the week ending July 19, 2014. Under these circumstances, the Department's decision is affirmed.

It is important to note that Lynch was cooperative with the Department's investigation into this matter and the overpayment itself was not caused by any action or inaction on Lynch's part. Lynch accurately reported the PTO payout during the week she received it. The Department's representative testified that these types of issues are typically caught at the time that an individual files for benefits because the Department requests that the employer report on the Notice of Claim whether vacation pay was received. Lynch's employer erred in not reporting that she had received PTO pay at the end of her employment when it returned the Notice of Claim. For that reason, the overpayment was not discovered until a routine audit of Lynch's third quarter 2014 claims was conducted. While Lynch was not at fault, Iowa law nevertheless requires that the Department collect overpaid benefits even where the claimant acted in good faith and is not at fault.

### **DECISION**

Iowa Workforce Development's decision dated March 13, 2015 is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$318. The Department shall take any action necessary to implement this decision.

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<sup>8</sup> 871 IAC 24.13(3)(b).