

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHERIE L WALTER Claimant IOWA WORKFORCE DEVELOPMENT DEPARTMENT	68-0157 (9-06) - 3091078 - EI APPEAL NO. 10A-UI-06453-JTT ADMINISTRATIVE LAW JUDGE DECISION OC: 05/10/09 Claimant: Appellant (1)
--	--

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Cherie Walter filed a timely appeal from the April 20, 2010, reference 02, decision that she was overpaid \$369.00 in benefits for the week ending May 30, 2009 based on another decision that she had received vacation pay that was deductible from our unemployment insurance benefits for that week and that exceeded her weekly unemployment insurance benefit. After due notice was issued, a hearing was held on June 16, 2010. Ms. Walter participated. Greg Smith, Human Resources Coordinator, represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and wages reported by the claimant. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-06452-JTT and the administrative law judge hereby takes official notice of the decision entered in that matter.

ISSUE:

Whether the claimant was overpaid \$369.00 in benefits for the week ending May 30, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cherie Walter was employed by Rinehart Food-Service until Thursday, May 14, 2009. At the end of the employment, Ms. Walter had accrued but not yet used 11.5 days (92 hours) of vacation pay benefit. Ms. Walter's final rate of pay was \$12.28 per hour. The dollar value of the vacation pay was \$1,129.76, which the employer paid to Ms. Walter on June 5, 2009.

Ms. Walter established a claim for benefits that was effective May 10, 2009. During the benefit week that ended May 16, 2009, Ms. Walter worked a full workweek and earned \$491.20 in regular wages. For that week, Ms. Walter reported to Workforce Development wages and vacation pay that exceeded her weekly benefit amount and received no unemployment insurance benefits. For the week that ended May 23, 2009, Ms. Walter reported \$948.00 and vacation pay and received no unemployment insurance benefits. For the weeks that ended May 30, June 6, June 13, and June 20, 2009, Workforce Development disbursed to Ms. Walter \$344.00 in regular weekly benefits. For those same weeks, Workforce Development disbursed

an additional \$25.00 in federal stimulus benefits. Ms. Walter's eligibility for the federal stimulus benefits was contingent upon her being eligible for the regular benefits.

On May 18, 2009, Workforce Development mailed a notice of claim to the employer. On May 21, 2009, the employer filed its response. The employer did not protest the claim for benefits. The employer provided vacation pay information in the space provided for such information. The employer indicated that \$1,129.76 in vacation pay had been paid to Ms. Walter. The employer designated May 17-30, 2009 as the period to which the vacation pay should be applied when determining Ms. Walter's eligibility for unemployment insurance benefits. Utilizing a five-day workweek, a Workforce Representative determined that there were ten working days that fell within the dates designated by the employer. Five of those days fell within the benefit week that ended May 23, 2009 and the other five days fell within the benefit week that ended May 30, 2009. The Workforce representative apportioned one half of the \$1,129.76 (\$565.00) to each of the two weeks. Because the amount apportioned to each week exceeded Ms. Walter's weekly unemployment insurance benefit amount of \$344.00, the apportionment of the vacation pay reduced Ms. Walter's eligibility for unemployment insurance benefits to zero during the weeks that ended May 23, 2009 and May 30, 2009. Because Ms. Walter had not received any benefits for the week ending May 23, 2009, the apportionment of the vacation pay to that week had no impact. However, because Ms. Walter had received \$344.00 in regular benefits and another \$25.00 in federal stimulus benefits for the week ending May 30, 2009, the apportionment of the vacation pay lead the Workforce representative to conclude that Ms. Walter had been overpaid \$369.00 in unemployment insurance benefits for that week.

The April 20, 2010, reference 01, vacation pay decision that prompted the overpayment decision has been affirmed on Appeal. See Appeal Number 10A-UI-06452-JTT.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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 weight of the evidence in the record establishes that Ms. Walter was overpaid \$369.00 in benefits for the week that ended May 30, 2009 because she received vacation pay benefits for the same week and the vacation pay benefits exceeded her weekly benefit amount, thus reducing her benefit eligibility for that week to zero.

DECISION:

The Agency representative's April 20, 2010, reference 02, decision is affirmed. The claimant was overpaid \$369.00 in benefits for the week ending May 30, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css