

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA M SPENCER**  
Claimant

**APPEAL NO. 11A-UI-10447-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/10/11  
Claimant: Appellant (2)**

Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The claimant appealed from a representative's decision dated August 2, 2011, reference 02, that held she is overpaid benefits \$56 for the week ending July 23, 2011, due to receiving vacation pay from Three Eagles of Lincoln. A hearing was held on August 30, 2011. The claimant participated.

**ISSUE:**

The issue is whether the claimant is overpaid benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the witness testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer on Tuesday, July 12, 2011. She filed her claimant effective July 10, and she reported earnings of \$400 for the week ending July 16, and she received no benefits. She reported earnings of \$170 for the week ending July 23 and she received partial benefits of \$56.

When the employer received the notice of claim, the employer stated in the remarks section that claimant received final pay and vacation pay totaling \$1,120, but it did not separate and designate the period to which the vacation pay should apply. During the hearing, the employer participant stated that it paid claimant for 48 hours of vacation pay (\$10 an hour times 48) totaling \$480.

The department decision that caused the overpayment has been modified in favor of the claimant (Appeal No. 11A-UI-10446-ST). The employer's failure to properly protest the vacation pay it paid to claimant limits the amount for the week ending July 23 to \$160.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes that the claimant is not overpaid benefits \$56 for the week ending July 23, 2011.

Since the vacation pay paid to claimant for the week ending July 23 is only \$160, the claimant should be given credit for an additional \$10 for unemployment, as she reported \$170 for this week and was paid a partial benefit of \$56

**DECISION:**

The representative's decision dated August 2, 2011, reference 02, is reversed. The claimant is not overpaid benefits \$56, but is underpaid \$10.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw