

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA T NGUYEN**  
Claimant

**APPEAL NO. 08A-UI-01496-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY LLC**  
Employer

**OC: 08/19/07 R: 03  
Claimant: Respondent (2)**

Section 96.4-3 – Still Employed at Same Hours and Wages  
Section 96.3-7 – Overpayment of Unemployment Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated February 1, 2008, reference 06, which held the claimant eligible to receive unemployment insurance benefits, finding that the claimant was still employed on-call working whenever work was available and that as the claimant was not performing services in the same pattern of the employment of the base period, the employer's account was subject to charging. After due notice, a telephone conference hearing was scheduled for and held on February 27, 2008. The claimant participated. Participating as a witness for the claimant was Michael Johnson. The employer participated by Theresa Feldman, assistant human resource manager. Official interpreter was Ms. Phung Nguyen.

**ISSUE:**

The issues in this matter are whether the claimant was working on-call when work was available and whether the claimant was performing services in the same pattern of employment as in the based period.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant began working for this employer in October of 1999. Ms. Nguyen worked as a full-time finish operator and was paid by the hour. The claimant continues to be employed IAC Iowa City LLC at the time of hearing.

On Monday, December 24; Tuesday, December 25; Wednesday, December 26; Monday, December 31; and Tuesday, January 1, Ms. Nguyen received full holiday pay from IAC Iowa City LLC but was not required to appear and perform services. On Tuesday, December 25; Wednesday, December 26; Thursday, December 27; and Friday, December 28, the claimant requested and received vacation pay from IAC Iowa City LLC. The claimant received numeration from the company in the amount of \$975.44 for the week ending December 24, 2007, through December 30, 2007.

Although Ms. Nguyen was receiving holiday pay for the time off work and also receiving vacation pay, she nonetheless filed a claim for unemployment insurance benefits, mistakenly believing that she was entitled to pay because she was not "at work." After the holiday, the claimant, as well as other similarly-situated workers, returned to regular employment with the company and the claimant continues to be employed in that capacity at the time of hearing.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based on the evidence in the record, that the claimant was not working a reduced workweek or working different hours from the contract of hire during the period in question. The evidence clearly establishes that the claimant received full holiday pay for all time away from work during this period and that, in addition, the claimant requested and received vacation pay for a number of days, amounting to gross pay in the amount of \$975.44.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

For the reasons stated herein, the administrative law judge concludes that the claimant was not on on-call status or employed part-time during the period in question. The claimant was receiving holiday pay for the holiday period in addition to vacation pay that she had requested from the company. Normal pay and hours resumed after the holiday period and the claimant continues to be employed in that capacity.

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.

Review of the record appears to show that the claimant has received an overpayment of benefits. However, those benefits have been offset. If, however, the claimant is determined to have been overpaid during the period in question, she is liable to repay the amount of overpayment of unemployment insurance benefits that she has received.

**DECISION:**

The representative's decision dated February 1, 2008, reference 06, is hereby reversed. The claimant was performing work in the same pattern of employment as the base period. The employer's experience account is relieved of charging for benefits paid during this period. If overpaid, the claimant is liable to repay the amount of overpayment to Iowa Workforce Development.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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