

**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**

**CONNIE L CAPEHART
2600 E 40TH CT
DES MOINES IA 50317-5538**

**DES MOINES IRON COMPANY
PO BOX 1382
DES MOINES IA 50305**

**Appeal Number: 06A-UI-07781-DT
OC: 07/02/06 R: 02
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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Connie L. Capehart (claimant) appealed a representative's July 31, 2006 decision (reference 03) that concluded the claimant was overpaid for benefits for the week ending July 15, 2006, due to receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2006. The claimant participated in the hearing. Virginia Scoonover appeared on the employer's behalf. During the hearing, Exhibits A-1 through A-3 were entered into evidence. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

FINDINGS OF FACT:

The claimant started working for the employer on August 23, 2004. She worked full-time on a Monday through Friday eight-hour per day schedule as an account assistant. Her last day of work was July 5, 2006. Her hourly rate of pay at that time was \$10.56.

The employer's normal payday is each Friday, with pay being paid current through the end of each week. On July 5, the employer gave the claimant her final paycheck in a gross amount of \$506.88. This represented 48 hours of pay ($\$506.88 \div 8$), broken down as: holiday pay for July 4 in the amount of \$84.48 ($\10.56×8 hours); regular pay for the claimant's last day of work on July 5 in the amount of \$84.48 ($\10.56×8 hours); and vacation pay for the previously taken day of vacation on July 3, plus the claimant's remaining 24 hours of accrued vacation, for a total vacation payment of \$337.92 ($\10.56×32 hours).

The claimant established an unemployment insurance benefit year effective July 2, 2006. Her weekly benefit amount was calculated to be \$334.00. The employer made a timely response to the notice of claim and reported the 24 hours (\$253.44) of accrued vacation unused as of July 5 as attributable to July 6 through July 10, 2006. The three workdays to which these hours would apply would be eight hours each (\$84.48) for Thursday, July 6, Friday, July 7 and Monday, July 10, 2006.

The claimant reported \$506.00 in gross wages and vacation for the benefit week ending July 8, 2006, and no residual benefits were payable. She did not report any wages or vacation for the week ending July 15, 2006 and received the full weekly benefit amount for that week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether vacation pay was properly deducted and whether an overpayment resulted.

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.

Of the \$506.88 paid to the claimant on July 5, 2006, \$422.40 ($\$10.56 \times 8 \times 5$) was reportable as combined wages, holiday pay and vacation pay. This still results in no residual benefit eligibility

to the claimant for the week ending July 8, 2006. The remaining \$84.48 ($\10.56×8) was properly attributed to Monday, July 10, 2006, and results in a dollar for dollar reduction of her benefit eligibility for the week ending July 15, 2006. Rounded to the nearest dollar, the overpayment was properly calculated to be \$84.00.

Because the claimant failed to report the vacation pay for the week ending July 15, 2006, benefits were paid to which the claimant was not entitled. Even though those benefits were received in good faith, they must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 31, 2006 decision (reference 03) is affirmed. The vacation pay was correctly allocated and deducted. One day vacation pay was properly carried over for allocation to the week ending July 15, 2006, resulting in a benefit overpayment of \$84.00.

ld/cs