

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

**Appeal Number:** 10-IWDUI-194  
**OC:** 06/15/08  
**Claimant:** Appellant (4)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**LACEY CRABTREE**  
**P.O. BOX 382**  
**GRANDVIEW, IA 52752-0382**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**150 DES MOINES ST.**  
**DES MOINES, IA 50319**

DAN ANDERSON, IWD

**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 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)

July 29, 2010

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(Dated and Mailed)

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Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE**

Lacey R. Crabtree filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated June 10, 2010, reference 02. In this decision, the Department determined that Crabtree was overpaid \$428 in unemployment insurance benefits for the four weeks between May 24, 2009 and July 4, 2009. The decision stated that the overpayment resulted from the claimant incorrectly reporting wages earned from Pretium Packaging, LLC. The decision cited Iowa Code section 96.16-4, indicating

the Department further determined the overpayment was the result of misrepresentation on Crabtree's part.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 2, 2010 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 7, 2009. On July 26, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jane Connor represented the Department and presented testimony. Appellant Lacey Crabtree appeared and presented testimony. Exhibit A, pp. 1-14, was submitted by the Department and admitted into the record as evidence.

### **ISSUES**

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the Department correctly calculated the overpayment.

Whether the Department correctly determined that any overpayment of benefits was due to misrepresentation on the part of Lacey Crabtree.

### **FINDINGS OF FACT**

Lacey Crabtree filed a claim for unemployment benefits with an effective date of August 23, 2009. Crabtree made claims for and received unemployment benefits during the second quarter of 2009. (Connor testimony).

IWD conducted a routine audit of Crabtree's unemployment claim for the second quarter of 2009. Pretium Packaging, LLC reported that Crabtree was earned the following:

Week ending May 30: \$93 in holiday pay  
Week ending June 6: \$93 in regular pay  
Week ending June 13: \$0  
Week ending June 20: \$372 in regular pay  
Week ending June 27: \$186 in regular pay  
Week ending July 4: \$326 in vacation pay

(Exh. A, p. 6). After receiving notice of the hearing on this appeal, Investigator Jane Connor contacted Pretium Packaging and asked them to recheck the figures provided. Pretium Packaging informed Connor that the figures previously reported were accurate. (Connor testimony).

The Department compared the information supplied by Pretium Packaging to that reported by Crabtree each week when she claimed benefits. During that time she reported having earned the following:

Week ending May 30: \$0  
Week ending June 6: \$67

Week ending June 13: \$0  
Week ending June 20: \$372  
Week ending June 27: \$70  
Week ending July 4: \$0

(Exh. A, p. 7).

During the period in question, Crabtree's weekly benefit amount was \$361. The Department used the weekly benefits amount to calculate the unemployment benefits Crabtree was eligible for based on the information provided by Pretium Packaging. Those benefits were then compared to the benefits actually paid out and it was determined Crabtree had been overpaid unemployment benefits. The comparison showed:

Week Ending	Benefits Paid	Benefits Entitled To	Overpayment
May 30	\$361	\$358	\$ 3
June 6	361	358	3
June 13	361	361	0
June 20	79	79	0
June 27	361	265	96
July 4	361	35	326
TOTAL:			\$428

(Exh. A, p. 7).

The Department sent Crabtree a Preliminary Audit Notice on February 2, 2010 informing her of the potential overpayment and allowing her to respond by February 12, 2010. (Exh. A, p. 8). Crabtree did respond and noted that she reported wages on the date she was paid as opposed to when she earned wages because her employer held her first paycheck for one week. The paystubs Crabtree submitted in support of her claim were from 2008 rather than 2009. (Exh. A, pp. 10-14).

At hearing Crabtree testified she reported her vacation pay when she finally received it which was not when reported by the employer. Crabtree reported she was laid off permanently as of July 1, 2009. (Crabtree testimony).

### **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, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD 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>1</sup> If a claimant is overpaid benefits as a result of misrepresentation, IWD may – in

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<sup>1</sup> Iowa Code § 96.3(7)(a) (2009).

addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant’s real or personal property and rights to property.<sup>2</sup>

A. Overpayment

There was credible evidence presented by the Department from Crabtree’s employer that Crabtree earned more during the weeks in question than she reported. The paystubs submitted by Crabtree in rebuttal to the employer’s evidence were for a previous year and were not relevant to the period in question. I accept as credible the evidence the Department presented regarding Crabtree’s wages during the weeks in question.

An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.<sup>3</sup> Crabtree, then, could have earned up to \$376 in a week and still received some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant’s wages in the week that exceed 25% of the weekly benefit amount.<sup>4</sup>

Additionally, Crabtree’s argument that she did not receive her vacation pay until weeks after she was laid off cannot serve to alter the Department’s calculation of the overpayment. 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>5</sup>

Generally speaking, vacation pay is deemed wages.<sup>6</sup> If an employer, as here, 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>7</sup>

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<sup>2</sup> 871 Iowa Administrative Code (IAC) 24.18.

<sup>3</sup> Iowa Code § 96.19(38)(b)(1) (2009).

<sup>4</sup> 871 IAC 24.18.

<sup>5</sup> Iowa Code § 96.5(7)(b) (2009).

<sup>6</sup> Iowa Code § 96.5(7)(a) (2009).

<sup>7</sup> Iowa Code § 96.5(7)(d) (2009).

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.<sup>8</sup>

Here, Crabtree was laid off as of July 1, 2009 and the vacation pay was therefore attributed to that week.

Applying the department's rules as set out above, the Department's calculation that Crabtree was overpaid \$428 in benefits must be affirmed.

**B. Misrepresentation**

The investigator originally assigned to this audit, Thomas Carnahan, determined that the overpayment to Crabtree was the result of her misrepresentation to the Department of her earnings in an attempt to receive benefits to which she was not entitled. Mr. Carnahan had retired by the time of hearing leaving Investigator Connor to speculate as to his rationale. Connor noted that Crabtree had filed previous claims in 2006 and 2008 and she opined that Carnahan would have assumed Crabtree was familiar with reporting earnings. Additionally, Connor pointed out that when weekly benefits are being claimed either over the telephone or on the internet, the claimant is asked specifically about whether he or she received holiday or vacation pay. Connor argued that Crabtree must have answered "no" to these questions. Connor stated that the claimant is given more than one admonition to provide accurate information.

Here, the evidence shows Crabtree correctly reported her earnings on the weeks ending June 13 and June 20. She misreported earnings on the weeks ending May 30, June 6, June 27 and July 4. The weeks ending May 30 and July 4 involved holiday and vacation pay respectively. It appears that Crabtree did not work during either of those weeks and was paid no regular wages. (Exh. A, p. 6). Additionally, according to Crabtree, she did not receive her vacation pay until after July 4. Under these circumstances, Crabtree may not have been aware the same needed to be reported. These factors along with the unavailability of Investigator Carnahan to personally explain the basis of his determination, there is not a preponderance of the evidence to support the determination that the overpayment in question was due to misrepresentation on Crabtree's part.

**DECISION**

The Department's decision dated June 10, reference 02, is MODIFIED. The claimant has been overpaid benefits in the amount of \$428. The overpayment is NOT due to misrepresentation.

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<sup>8</sup> 871 Iowa Administrative Code (IAC) 24.16(3)-(4).