

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY F NESS
Claimant

APPEAL NO. 07A-UI-00849-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPERATION NEW VIEW
Employer

**OC: 06/04/06 R: 04
Claimant: Appellant (4)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant appealed from the January 25, 2007, reference 02, decision that concluded the claimant was overpaid unemployment insurance benefits as a result of a failure to report or incorrectly reporting her holiday pay from Operation New View. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether the claimant was overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's weekly benefit amount is \$179.00. She received 13 hours of holiday pay at \$9.11 per hour or \$118.00. In addition she received 2.85 hours of vacation pay at \$9.11 per hour or \$26.00. The department gave the claimant unemployment insurance benefits in an amount of \$108.00 for the week ending December 30, 2006. The employer incorrectly reported the amount of vacation and holiday pay on the notice of claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 has been overpaid unemployment insurance benefits pursuant to Iowa Code § 96.3(7) as the employer did not correctly report holiday and vacation pay for the one-week period ending December 30, 2006. The representative's decision calculation is incorrect. The claimant received \$108.00 in unemployment insurance benefits for the week ending December 30, 2006. She should have received \$79.00. She is overpaid unemployment insurance benefits in an amount of \$29.00.

DECISION:

The January 25, 2007, reference 02, decision is modified in favor of the appellant. The claimant was overpaid unemployment insurance benefits in the amount of \$29.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css