

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA DAHLHAUSER
Claimant

APPEAL NO: 10A-UI-04879-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

OC: 12/06/09
Claimant: Appellant (2)

Iowa Code § 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Barbara Dahlhauser (claimant) appealed an unemployment insurance decision dated March 25, 2010, reference 01, which held that she was overpaid unemployment insurance benefits in the amount of \$122.00 due to the receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2010. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was overpaid \$122.00 in unemployment insurance benefits for the one-week period ending January 9, 2010?

FINDINGS OF FACT:

The administrative law judge, having heard and considered all of the evidence in the record, finds that: The overpayment issue in this case was created by the claimant's failure to report vacation pay for the one-week period ending January 9, 2010. However, the claimant did report vacation pay for the week ending January 23, 2010 and her benefits were reduced that week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.
 - a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$122.00 pursuant to Iowa Code § 96.3-7 because she already received reduced unemployment benefits for a different week.

DECISION:

The unemployment insurance decision dated March 25, 2010, reference 01, is reversed. The claimant was not overpaid unemployment insurance benefits in the amount of \$122.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs