

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TANYA R MARTINEZ
Claimant

BERTCH CABINET MFG INC
Employer

APPEAL NO. 14A-UI-07832-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/22/13
Claimant: Respondent (2R)**

Section 96.5-5 – Worker's Compensation
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 23, 2014, reference 03, which held claimant eligible for unemployment benefits. After due notice, a telephone conference hearing was scheduled for and held on August 20, 2014. Claimant participated. Employer participated by Mitzi Tann, Human Resource Director. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is disqualified for benefits due to the receipt of Workers' Compensation benefits. The issue is whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was working part time due to a work-related injury. Claimant was collecting partial unemployment and Workers' Compensation benefits for the three weeks ending July 26, 2014.

For the week ending July 12, 2014 claimant earned wages of \$220.00 and received temporary partial disability of \$75.44.

For the week ending July 19, 2014 claimant earned wages of \$160.00 and received temporary partial disability of \$115.48.

For the week ending July 26, 2014 claimant earned wages of \$156.00 and received temporary partial disability of \$117.79.

The workers' compensation was for a temporary disability or healing period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Claimant has received Workers' Compensation benefits since starting unemployment. The benefits were for a temporary disability and as such are deductible. This qualifies claimant for unemployment but the benefits should be withheld.

Iowa Code § 96.3-7 provides in pertinent part:

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. . . .

This matter is remanded for correction of reported wages and workers' compensation benefits. This matter is remanded for determination of any overpayment of unemployment benefits.

DECISION:

The decision of the representative dated July 23, 2014, reference 03, is reversed and remanded for correction of the wages reported and workers' compensation received. This matter is remanded for determination of any potential overpayment. Claimant is eligible to receive unemployment insurance benefits, with reduction for wages earned and workers' compensation received.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs