

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA J KOLBET
Claimant

APPEAL NO. 10A-UI-11910-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/21/09
Claimant: Appellant (4)

Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 20, 2010, reference 03, that concluded she was overpaid \$592.00 in unemployment insurance benefits. A telephone hearing was held on October 7, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing.

ISSUE:

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer May 27, 2010, when she was laid off over the summer months. The claimant worked 35 hours per week at a rate of pay of \$12.89 per hour. After her last day of work, the claimant was paid vacation pay totaling \$1,043.19, which represented 80.93 hour of vacation pay, and \$90.23 in holiday pay for Memorial Day, May 31.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of May 30, 2010. Her weekly benefit amount was \$271.00. The claimant received \$542.00 in benefits for the weeks ending June 5 and 12, 2010. She also received an additional stimulus payment of \$25.00 per week.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer designated the period from May 28 through June 16, 2010, as the period to which the vacation pay was to apply. It designated May 31 as the date to which the \$90.23 (\$12.89 x 7 hours) holiday pay applied. It reported the claimant's vacation pay of \$1,043.19 was calculated based on 80.93 hours times \$12.93

The claimant was informed that she could report the vacation pay when she received the check for the pay. As a result, she reported \$933.00 in vacation pay for the week ending June 19, and received no benefits for that week. She reported \$239.00 in vacation pay for the week ending July 3, 2010, and was paid \$104.00 in benefits.

On September 9, the Agency determined the claimant's benefits for week ending July 3 should not have been reduced because the vacation pay would have been exhausted by then. A special payment of \$239.00 was used to partially offset the amount of overpaid benefits.

In an unemployment insurance appeal decision in 10A-UI-11909-SWT, it was concluded that the claimant was ineligible for benefits for the weeks ending June 5 and 12, 2010, and was eligible for was eligible for \$130.00, in benefits for the week ending June 19, 2010.

REASONING AND CONCLUSIONS OF LAW:

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

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code section 96.3-7.

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code section 96.5-7. Holiday pay is also deductible under 871 IAC 24.13(2)a. The rules provide a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent day of the designated vacation period until the amount of vacation pay is exhausted, and "unless otherwise specified by the employer, the amount of vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek. 871 IAC 24.16(1) & (4)

In an unemployment insurance appeal decision in 10A-UI-11909-SWT, it was concluded that the claimant was ineligible for benefits for the weeks ending June 5 and 12, 2010, and was eligible for was eligible for \$130.00, in benefits for the week ending June 19, 2010. As a result, the claimant was overpaid \$592.00 in benefits for the weeks ending June 5 and 12. She was underpaid, \$130.00 for the week ending June 19.

DECISION:

The unemployment insurance decision dated August 20, 2010, reference 03, is modified in favor of the claimant. The claimant was overpaid \$592.00 in benefits for the weeks ending June 5 and 12. She was underpaid, \$130.00 for the week ending June 19.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs