

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELYN WICKEY
Claimant

APPEAL NO: 13A-UI-08938-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/07/13
Claimant: Appellant (2)

Iowa Code § 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Jacqueline Wickey (claimant) appealed an unemployment insurance decision dated July 29, 2013, reference 02, which held that she was overpaid unemployment insurance benefits in the amount of \$225.00 due to the receipt of vacation pay. Due notice was issued scheduling the matter for a telephone hearing to be held September 10, 2013. Because a decision fully favorable to the party could be made based on the administrative record, a hearing was deemed unnecessary. Based on the evidence 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 \$225.00 in unemployment insurance benefits for the one-week period ending July 13, 2013.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant received \$1,197.00 in vacation pay on June 30, 2013. She did not file a claim for unemployment insurance benefits until the following week. The claimant did not receive vacation pay for the week ending July 13, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 \$225.00 pursuant to Iowa Code § 96.3-7. She did not receive vacation pay for the week ending July 13, 2013 and qualifies for benefits that week, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated July 29, 2013, reference 02, is reversed. The claimant was not overpaid unemployment insurance benefits in the amount of \$225.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css