

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIME L BRIDGETT
Claimant

APPEAL NO: 08A-UI-00986-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED GARAGE DOOR REPAIR
Employer

OC: 12/09/07 R: 01
Claimant: Appellant (4)

Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Jaime L. Bridgett (claimant) appealed a representative's January 16, 2008 decision (reference 04) that concluded she had been overpaid \$330.00 for the weeks ending December 29, 2007, and January 5, 2008, because she had not correctly reported her vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2008. The claimant participated in the hearing. Randy Hicklin, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

To what week or weeks should the claimant's vacation pay be attributed?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant's last day of work for the employer was December 10, 2007. This day was also the end of the employer's payroll period. The claimant earned a \$400.00 a week. She usually worked 40 hours a week.

The claimant established a claim for unemployment insurance benefits during the week of December 9, 2007. She filed a claim for benefits and reported she had earned \$400.00 for the week ending December 15, 2007.

Before the claimant's employment ended, she had requested vacation for December 26, 2007, through January 2, 2008. The employer decided to pay the claimant the vacation pay she would have earned for this time. When the employer completed the notice of claim form, the employer reported \$330.40 vacation pay should be attributed to December 26, 2007, through January 2, 2008.

The claimant filed claims for the weeks ending December 29 and January 5, 2008. The claimant reported she had not earned any wages or received any vacation pay these weeks. As a result, she received her maximum weekly benefit amount of \$254.00 for both weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant who is partially unemployed may earn weekly a sum equal to the her weekly benefit amount plus \$15.00 before being held ineligible for excessive earnings. If a claimant earns less than her weekly benefit plus \$15, wages shall be deducted in accordance with the law. 871 IAC 24.18.

If the employer properly notifies the Department that vacation pay should be attributed to a specific period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. 871 IAC 24.16(1).

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7.

The claimant filed a claim for the week ending December 15, 2007. Since the employer designated the vacation period as December 26, 2007, through January 2, 2008, the claimant only needed to report the \$80.00 she earned for December 10. When the claimant filed her claim, she had no idea the employer would designate her vacation pay to December 26, 2007, through January 2, 2008, and reported she had earned \$400.00 this week. As a result, she did not receive any unemployment insurance benefits this week. The claimant was legally entitled to receive \$240.00 in benefits for the week ending December 29, 2007.

The claimant is not at fault in failing to report she received vacation pay for December 26, 2007, through January 2, 2008. The claimant's vacation pay must be designated to the time frame the employer designated. This means the claimant has been overpaid a total of \$330.00 in benefits she received for the weeks ending December 29, 2007, and January 5, 2008, because she had not reported any vacation pay for these weeks.

The end result in this matter is that the claimant has only been overpaid a total of \$90.00 because the Department did not pay her benefits she was entitled to receive for the week ending December 15.

DECISION:

The representatives' January 16, 2008 decision (reference 04) is modified in the claimant's favor. The employer timely designated that the claimant's vacation should be attributed to December 26, 2007, through January 2, 2008. The claimant had no idea the employer would do this and did not report vacation pay for this time frame. As a result, she is overpaid \$330.00 for the weeks ending December 29, 2007, and January 5, 2008. The claimant only earned \$80.00 in wages for the week ending December 15, 2007. Therefore, the claimant is legally

entitled to receive \$240.00 in benefits for this week. Since the Department has already recouped \$330.00 from the claimant from benefits she was entitled to receive subsequent to January 5, the Department shall pay the claimant the \$240.00 she is legally entitled to receive for the week ending December 29, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs