

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J OLSON
Claimant

APPEAL NO. 10A-UI-13488-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION
Employer

OC: 04/18/10
Claimant: Appellant (2)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2010 (reference 01) decision that found the claimant overpaid benefits due to the receipt of back pay for the week ending April 24, 2010. After due notice was issued, a telephone conference hearing was held on November 9, 2010. Claimant did not respond to the hearing notice instructions and did not participate. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant is overpaid benefits as a result of back pay.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant took the five mandated unpaid days off (MUD) during the week ending April 24, 2010. He was not paid wages for that week.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has not been overpaid benefits.

871 IAC 23.2(2) provides:

Definition of wages for employment during a calendar quarter.

(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The Employer's Contribution and Payroll Report Form 65-5300, shall be used as prima facie evidence of when the wages were paid. If the wages are not listed on the 65-5300, they shall be considered as paid:

- a. On the date appearing on the check.
- b. On the date appearing on the notice of direct deposit.
- c. On the date the employee received the cash payment.
- d. On the date the employee received any other type of payment in lieu of cash.

871 IAC 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$186.00, since he did not work or earn wages during the week at issue.

DECISION:

The September 21, 2010 (reference 01) decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$186.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw