

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JEFFREY M GASS
9919 ILLIS DR
URBANDALE IA 50322-8405**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**Appeal Number: 04A-UI-00150-MT
OC: 11/30/03 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated December 30, 2003, reference 02, that concluded claimant was overpaid unemployment insurance benefits in the amount of \$311.00 as a result of a disqualification decision. A telephone hearing was scheduled and held on January 28, 2004 pursuant to due notice. Claimant did participate.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a disqualification decision that has now been affirmed. All of the pay should have been attributed to the first week of unemployment.

Claimant worked on an overtime-incentive plan, which gave extra vacation pay for overtime hours worked. Claimant had one week of vacation pay accrued on the incentive program. The vacation pay should not have been split into two weeks.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 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 claimant is overpaid unemployment insurance benefits in the amount of \$311.00 pursuant to Iowa Code Section 96.3-7 as the disqualification decision that created the overpayment decision has now been affirmed. All of the pay should have been attributed to the first week of unemployment. Claimant worked on an overtime-incentive plan, which gave extra vacation pay for overtime hours worked. Claimant had one week of vacation pay accrued on the incentive program. The vacation pay should not have been split into two weeks.

DECISION:

The decision of the representative dated December 30, 2003, reference 02, is affirmed. Claimant is overpaid unemployment insurance benefits in the amount of \$311.00.

mdm/kjf