

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 09-IWDUI-147
OC: 06/15/08
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CINDY RILEY
614 3RD STREET
FORT MADISON, IA 52627-3003

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

GLEASON CORPORATION
10474 SANTA MONICA BLVD. #400
LOS ANGELES, CA 90025-6932

DAN ANDERSON, IWD

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 the Department. 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)

July 30, 2009

(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE

Cindy Riley filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated June 25, 2009, reference 01. In this decision, the Department determined that Ms. Riley was overpaid \$425 in unemployment insurance benefits for the two weeks ending October 4, 2008 and October 11, 2008. The decision stated that the overpayment resulted from the claimant incorrectly reporting vacation pay from Gleason Corporation.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 16, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 17, 2009. On June 28, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Karen Von Behren represented the Department and presented testimony. Appellant Cindy Riley appeared and presented testimony. Lisa Tewsley from the data processing department of Gleason Corporation, a party to the appeal, appeared and presented testimony. Exhibits 1 through 5 were submitted by the Department and admitted into the record as evidence.

ISSUES

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the Department correctly calculated the overpayment.

FINDINGS OF FACT

Cindy Riley filed a claim for unemployment benefits with an effective date of June 15, 2008. Ms. Riley made claims for and received unemployment benefits during the fourth quarter of 2008.

IWD conducted a routine audit of Ms. Riley's unemployment claim for the fourth quarter of 2008. Gleason Corporation reported that Ms. Riley was paid \$906 in vacation pay after the plant shut down and the employees were laid off. Ms. Riley's last day of work with Gleason was September 30, 2008. Although September 30 was Ms. Riley's last day of work, she received her lump-sum vacation pay in a check dated October 15, 2008. Gleason did not designate a time period to which the vacation pay should apply.

In the week ending October 4, 2008, which included September 30, Ms. Riley was paid \$167 in unemployment benefits. Ms. Riley reported to the Department that she was paid wages in the amount of \$155 during that week. Ms. Riley was paid \$258 in unemployment insurance benefits in the week ending October 11, 2008. Ms. Riley did not report any wages during that week. Ms. Riley did not receive unemployment benefits during the week ending October 18, 2008 because she reported having been paid \$906 that week. Ms. Riley's weekly benefit amount at that time was \$258.

After receiving the information from Gleason Corporation regarding vacation pay, the Department retroactively prorated the vacation pay Ms. Riley received. The Department divided the total amount of vacation pay by five and came up with a figure of \$181.20. The Department applied three days of the vacation pay to the week ending October 4 (for October 1, 2, and 3), for a total of \$544. The Department applied two days to the next workweek, the week ending October 11, for a total of \$362.40. (Exh. 4; Von Behren testimony).

The Department then went back and, for the weeks ending October 4 and October 11,

2008, deducted the vacation pay attributable to each week dollar-for-dollar from the benefits that Ms. Riley received. Based on this calculation, the Department determined that Ms. Riley was overpaid benefits in the amount of \$425 – \$167 for the week ending October 4 and \$258 for the week ending October 11. (Exh. 3).

When Ms. Riley actually reported her vacation pay to the Department in the week ending October 18, 2008, she was determined ineligible for benefits in that week. Based on its proration of vacation pay to the weeks ending October 4 and October 11, the Department determined that Ms. Riley should have received her weekly benefit amount of \$258 in the week ending October 11. Consequently, the Department reduced the overpayment by \$258. The final overpayment amount asserted by the Department is \$167.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.¹

In this case, the claimed overpayment is due to a discrepancy in the way Ms. Riley reported her vacation pay and the way the Department ultimately determined her vacation pay should have been attributed to her claim.

If an employer makes a payment of vacation pay or pay in lieu of vacation, the employer may designate to the Department the period to which the payment should be allocated. In order for the employer's designation to be effective, it must be made to the Department in writing within 10 calendar days after the employer is notified of the individual's claim.²

Generally speaking, vacation pay is deemed wages.³ If an employer, as here, does not designate the time period to which the vacation payment should apply,

[p]ayments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter.⁴

¹ Iowa Code § 96.3(7)(a) (2009).

² Iowa Code § 96.5(7)(b) (2009).

³ Iowa Code § 96.5(7)(a) (2009).

⁴ Iowa Code § 96.5(7)(d) (2009).

The Department's regulations make clear that if the employer does not designate the time period of the vacation pay, the entire amount is applied to the one-week period starting on the first workday following the last day worked.⁵

In this case, the last day Ms. Riley worked was September 30, 2008, a Tuesday. The Department applied the vacation pay in a prorated basis over the next seven-day period, October 1 through October 7. Three days were allocated to the benefit week ending October 4 and two days were allocated to the benefit week ending October 11. The Department prorated the vacation pay correctly. In this case, the vacation pay for each week at issue exceeded Ms. Riley's weekly benefit amount, therefore Ms. Riley was overpaid in the full amount of benefits paid for the weeks ending October 4 and October 11.

The Department subtracted the underpayment of \$258 for the week ending October 18 from the overpayment of \$425 and correct calculated the net overpayment as \$167.

DECISION

The Department's decision dated June 25, 2009, reference 01, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$167.

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