

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER BIRD**  
Claimant

**APPEAL NO. 17A-UI-11140-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/24/17**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

The claimant appealed from the October 19, 2017, reference 05, decision that concluded the claimant was overpaid unemployment insurance benefits due to the receipt of vacation pay from Court Avenue Partners II. After hearing notices were mailed to the claimant's last-known address of record, a telephone hearing was held on November 17, 2017. The claimant participated personally. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, finds that: The claimant was separated on September 25, 2017, and received vacation pay in the amount of \$2,113.82 based upon a rate of pay at \$24.10 per hour or \$192.80 per day. The claimant usually worked forty hours per week, Monday through Friday. At a rate of \$24.10 per hour, her weekly wage would have been \$964.00. The employer did designate September 26, 2017 through October 11, 2017, as the period to which the vacation pay was to be applied in the notice of claim.

At the appeal hearing it admitted that the actual period of time was September 26, 2017, through October 10, 2017. The claimant would have received \$964.00 per week in vacation pay for all the work days for the period ending October 9, 2017. For the one day, October 10, 2017, she would have received \$185.82.

The claimant filed for unemployment insurance benefits with an effective date of September 24, 2017. Her weekly benefit amount is \$473.00. For the week ending September 30, 2017, the claimant did not receive any benefits. For the week ending October 7, 2017, the claimant received \$448.00 in unemployment insurance benefits. For the week ending October 14, 2017, the claimant received \$473.00 in unemployment insurance benefits. The overpayment issue in

this case was created by a disqualification decision that has now been modified in favor of the appellant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, 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) (a) 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 employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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 was overpaid unemployment insurance benefits in an amount of \$827.00 pursuant to Iowa Code Section 96.3-7 as the disqualification decision that created the overpayment decision has now been modified in favor of the appellant.

**DECISION:**

The October 19, 2017, reference 05, decision is modified in favor of the claimant. The claimant was overpaid unemployment insurance benefits in an amount of \$827.00 due to the receipt of vacation pay.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs