

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

DUANE W KENAGY
2438 'M' AVE
CLARINDA IA 51632

INTIER AUTOMOTIVE SEATING
OF AMERICAN INC
2700 N BROADWAY
RED OAK IA 51566

Appeal Number: 05A-UI-08146-HT
OC: 08/22/04 R: 01
Claimant: Appellant (2)

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) – Overpayment

STATEMENT OF THE CASE:

The claimant, Duane Kenagy, filed an appeal from a decision dated August 3, 2005, reference 02. The decision found him overpaid \$106.00 in unemployment benefits due to incorrectly reporting vacation pay. After due notice was issued a hearing was held by telephone conference call on August 24, 2005. The claimant participated on his own behalf. The employer, Intier Automotive Seating of American, Inc. (Intier), did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Duane Kenagy began employment with Intier in July 1998. The company shut down from July 11 until July 22, 2005, for inventory. Mr. Kenagy worked Monday, July 11, 2005, doing the inventory, then received five days of vacation pay for July 12, 13, 14, 15 and 18, 2005, at a rate of \$106.00 per day. He also worked Friday, July 22, 2005, when the plant reopened and earned wages of \$106.00.

The claimant filed an additional claim for benefits with an effective date of July 17, 2005, and reported earnings of \$212.00, and received unemployment benefits in the amount of \$205.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid. The judge concludes he is not.

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 claimant reported \$212.00 for the week of July 23, 2005, split evenly between vacation pay and wages. The amount of benefits he should have received was \$205.00, which is what he was paid. He is not overpaid.

DECISION:

The representative's decision of August 3, 2005, reference 02, is reversed. Duane Kenagy is not overpaid \$106.00 for the week ending July 23, 2005.

bgh/s