

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE W VORTHERMS
Claimant

APPEAL NO. 13A-UI-07772-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/19/13
Claimant: Appellant (1)

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Dale Vortherms filed a timely appeal from the June 24, 2013, reference 03, decision that he was overpaid \$1,233.00 in benefits for the three-week period of May 26, 2013 through June 15, 2013, based on receipt of vacation pay. After due notice was issued, a hearing was held on September 9, 2013. Mr. Vortherms participated. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-07771-JTT. Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO) of wages reported by the claimant and benefits disbursed to the claimant.

ISSUE:

Whether the claimant was overpaid \$1,233.00 in benefits for the three-week period of May 26, 2013 through June 15, 2013, based on receipt of vacation pay.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dale Vortherms established a claim for unemployment insurance benefits that was effective May 19, 2013. Workforce Development set Mr. Vortherms' weekly benefit amount at \$411.00. Mr. Vortherms reported the full vacation pay amount to Workforce Development as part of his claim for the week ending May 25, 2013 and did not receive any unemployment insurance benefits for that week. Mr. Vortherms then received \$411.00 in weekly benefits for the weeks ending June 1, June 8 and June 15, 2013. The total amount of gross unemployment insurance benefits disbursed to Mr. Vortherms for those three weeks was \$1,233.00. Mr. Vortherms did not receive benefits for the seven-week period of June 16 through August 3, 2013.

On June 24, 2013, a Workforce Development representative entered a reference 02 decision that disqualified Mr. Vortherms for unemployment insurance benefits for the 11-week period of May 19, 2013 through August 3, 2013, based on an agency conclusion that he had received vacation pay that was deductible from his unemployment insurance benefits. The June 24, 2013, reference 02, decision has been affirmed on appeal. See Appeal Number 13A-UI-07771-JTT. The overpayment decision on appeal in this matter was prompted by the June 24, 2013, reference 02, decision regarding vacation pay.

Workforce Development approved \$411.00 in weekly benefits for Mr. Vortherms for the benefit weeks that ended August 10, August 17 and August 24, 2013. The total amount of benefits approved for those three weeks was \$1,233.00. However, Workforce Development withheld the benefits for those three weeks to offset or recover the \$1,233.00 the agency believed to have been overpaid for the three-week period of May 26 through June 15, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7 provides in pertinent part:

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) 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. . . .

Because the June 24, 2013, reference 02, decision disqualified Mr. Vortherms for the \$1,233.00 in benefits he received for the three-week period of May 26 through June 15, 2013, and because the decision regarding vacation pay has been affirmed on appeal, the benefits Mr. Vortherms received constituted an overpayment of benefits that he was required to repay. The overpayment has been recovered through an offset of benefits that would otherwise have been disbursed for the three-week period of August 4, 2013 through August 24, 2013.

DECISION:

The agency representative's June 24, 2013, reference 03, decision is affirmed. The claimant was overpaid \$1,233.00 in benefits for the three-week period of May 26, 2013 through June 15, 2013, based on receipt of vacation pay. The overpayment has been recovered.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed