

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L LORING
Claimant

APPEAL NO. 10A-UI-05693-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

OC: 01/03/10
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 2, 2010, reference 01, decision that found him overpaid unemployment insurance benefits in the amount of \$123.00 due to receipt of vacation pay. After due notice was issued, a hearing was held by telephone on May 14, 2010. The claimant did participate. The employer participated through Teresa Feldmann, Assistant Human Resource Manager.

ISSUE:

The issue is whether the claimant was overpaid unemployment insurance benefits due to his receipt of vacation pay.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was laid off due to lack of work from January 4, 2010 through January 8, 2010 and returned to work the following week. During the week of his layoff the claimant was not paid any vacation pay for the layoff period. On January 15, the employer paid out to every employee any outstanding vacation pay that they were owed from the prior 2009 calendar year. The claimant received his vacation pay for eight hours in the amount of \$123.00. The claimant received the vacation pay after he had been called back to work. Mr. Loring was not required to report the vacation pay to the agency as it was received after his layoff was over and not during the time that he was claiming benefits due to being laid off work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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 based upon the evidence in the record that the claimant was not overpaid unemployment insurance benefits in the amount of \$123.00 pursuant to Iowa Code section 96.3-7 as the claimant did correctly report for the one-week period ending January 9, 2010. The claimant did not report vacation pay because he had not received vacation pay during the period of layoff and was not obligated to report that amount.

DECISION:

The February 2, 2010, reference 01, decision is reversed. The claimant is not overpaid unemployment insurance benefits in the amount of \$123.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs