

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA NUNO FREGOSO
Claimant

APPEAL NO. 10A-UI-08370-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 04/18/10
Claimant: Appellant (4-R)**

Iowa Code Section 96.5(5) - Deduction of Worker's Compensation Benefits for Temporary Disability

STATEMENT OF THE CASE:

Gloria Nuno filed a timely appeal from the May 25, 2010, reference 05, decision that she was receiving worker's compensation benefits for temporary disability that were deductible from her weekly unemployment insurance benefits. After due notice was issued, a hearing was held on July 28, 2010. Ms. Nuno participated. Spanish-English interpreter Ike Rocha assisted with the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the June 9, 2010, reference 07 decision that discontinued the worker's compensation benefit deduction effective June 6, 2010. The administrative law judge took official notice of the June 1, 2010 letter from John Morrell Corporate Benefits Department that the claimant had submitted to Workforce Development on June 7, 2010.

The administrative law judge hereby reopens the record for the limited purpose of taking official notice of the information and documentation the claimant provided to Workforce Development on May 18, 2010 regarding her receipt of worker's compensation benefits.

ISSUE:

Whether the claimant received worker's compensation benefits for temporary total disability (TTD) that were deductible from the claimant's unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gloria Nuno established a claim for unemployment insurance benefits that was effective April 18, 2010 and received benefits. Workforce Development calculated her weekly unemployment insurance benefit amount at \$326.00.

Ms. Nuno received unemployment insurance benefits as follows. For the week ending April 24, 2010, she reported \$205.00 in vacation pay and received \$121.00 in benefits. For the weeks ending May 1 and 8, 2010, she reported no wages and received \$326.00 in benefits. For the

weeks ending April 24, May 1 and May 8, Ms. Nuno also received \$25.00 in weekly federal stimulus benefits, or a total of \$75.00. Her eligibility for those benefits was contingent upon her being eligible for regular benefits during the same week.

For the weeks ending May 15, 22, 29, and June 5, she reported no wages and received no benefits.

For the weeks ending June 12 and 19, Ms. Nuno reported no wages, was approved for \$326.00 in unemployment insurance benefits, but the benefits were withheld and offset against what the Agency at that point deemed an overpayment of benefits.

For the week that ended June 26, 2010, Ms. Nuno reported no wages, was approved for \$326.00 in benefits, but \$196.00 in benefits were withheld and off-set against what the Agency at that point deemed an overpayment of benefits. Workforce Development disbursed \$130.00 in benefits to Ms. Nuno for the week that ended June 26, 2010.

For the weeks that ended July 3, 10, 17 and 24, Ms. Nuno reported no wages and received \$326.00 in weekly benefits.

For the period April 18, 2010 through June 2, 2010, Ms. Nuno had received worker's compensation benefits for temporary disability (TTD) relating to a workplace fall and injury to her shoulder. The worker's compensation benefits totaled \$2,082.18 and ceased as of June 2, 2010.

On May 18, 2010, Ms. Nuno provided Workforce Development with documentation regarding the worker's compensation benefits she had received for temporary total disability (TTD). For the week ending April 2, 2010, Ms. Nuno received \$193.69 in TTD benefits. For the week ending May 1, 2010, Ms. Nuno received \$338.96 in TTD benefits. On May 8, 2010, Ms. Nuno received \$1,549.53 in TTD. This amount included \$338.96 for the weeks ending May 8, 15, 22, and 29, and \$193.69 for May 31, June 1 and 2, during the week that ended June 5, 2010.

On June 9, 2010, a Workforce Development representative entered a reference 07 decision that discontinued the worker's compensation TTD benefit deduction effective the week that ended June 5, 2010.

REASONING AND CONCLUSIONS OF LAW:

Worker's compensation benefits for temporary disability are deductible from unemployment insurance benefits on a dollar-per-dollar basis. See Iowa Code section 96.5(5)(a)(2) and (b).

The weight of the evidence in the record indicates that Ms. Nuno received worker's compensation benefits that were deductible from her unemployment insurance benefits for the weeks that ended April 24, May 1, 8, 15, 22, 29, and June 5, 2010, as follows.

For the week that ended April 24, 2010, Ms. Nuno had vacation pay of \$205.00 and worker's compensation benefits of \$194.00. This totaled \$399.00, exceeded her weekly unemployment insurance benefit amount to zero. Because Workforce Development had paid Ms. Nuno \$121.00 in unemployment insurance benefits for the week ending April 24, 2010, this amount represented an overpayment of benefits. There was an additional \$25.00 overpayment of federal stimulus benefits.

For the weeks ending May 1, 8, 15, 22, and 29, 2010, Ms. Nuno received \$339.00 in worker's compensation benefits. This exceeded her unemployment insurance benefit amount, reduced her eligibility for unemployment insurance benefits to zero, and created a \$754.00 overpayment of regular benefits for the two-week period of April 25-May 8, 2010. During this same two-week period, there was an additional \$50.00 overpayment of federal stimulus benefits.

Because of the worker's compensation benefits, Ms. Nuno was not eligible for any unemployment insurance benefits during the period of April 18 through May 29, 2010.

For the week that ended June 5, 2010, Ms. Nuno received \$194.00 in worker's compensation benefits. This amount was deductible from Ms. Nuno's \$326.00 unemployment insurance benefit eligibility and reduced Ms. Nuno eligibility for unemployment insurance benefits that week to \$132.00. The administrative law judge notes that Workforce Development did not disburse any unemployment insurance benefits to Ms. Nuno for the week that ended June 5, 2010. Thus, there was a \$132.00 underpayment of unemployment insurance benefits for the week that ended June 5, 2010.

The total overpayment of benefits for the period of April 18, 2010 through May 8 2010 was \$848.00. Workforce Development recovered this amount through the offset of \$848.00 in benefits during the weeks that ended June 12, 19, and 26, 2010. The overpayment has already been addressed in the May 27, 2010, reference 06 decision and, therefore, need not be further addressed here.

DECISION:

The Agency representative's May 25, 2010, reference 05, decision is modified as follows. The claimant received worker's compensation benefits for temporary disability (TTD) that were deductible from her unemployment insurance benefits for the period of April 18 through June 5, 2010. Due to receipt of the worker's compensation benefits, the claimant was not eligible for unemployment insurance benefits for the weeks that ended April 24, May 1, 8, 15, 22, and 29, 2010. Due to receipt of \$194.00 in worker's compensation benefits for the week that ended June 5, 2010, the claimant's eligibility for regular unemployment insurance benefits was reduced to \$132.00. The claimant was otherwise eligible for benefits, provided she was otherwise eligible.

The overpayment of benefits for the weeks ending April 24, May 1 and May 8, 2010 has already been addressed in the May 27, 2010, reference 06 decision and, therefore, need not be further addressed here.

This matter is remanded to the Claims Division to address the \$132.00 underpayment of benefits for the week that ended June 5, 2010, along with the claimant's eligibility for the \$25.00 federal stimulus benefits for that week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs