

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

KHAMBONG K. KHOUNLO
606 SE TROWBRIDGE
DES MOINES IA 50315

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-02093-B4T
OC: 01/25/04 R: 02
Claimant: Appellant (1)

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:

Khambong K. Khounlo appealed from an unemployment insurance decision dated February 23, 2004, reference 02, that held, in effect, the claimant was overpaid benefits in the amount of \$396.00 for the two weeks between January 25, 2004 and February 14, 2004 because he failed to report or incorrectly reported vacation pay from Colorfx Marketing Services.

A consolidated telephone conference hearing was scheduled and held on March 29, 2004. The claimant participated.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Khambong K. Khounlo received unemployment insurance benefits in the gross amount of \$396.00.

The claimant filed an initial claim for benefits having an effective date of January 25, 2004. The claimant's weekly benefit amount was determined to be \$241.00 and his average weekly wage determined to be \$408.27.

A notice of claim was mailed to the employer on January 29, 2004 and a timely protest filed. The protest indicated only that the claimant was paid vacation pay in the amount of \$825.47 to be applied to the period from January 28, 2004 to February 11, 2004.

Application of the vacation pay received by the claimant as shown by page six attached to Exhibit One admitted into evidence.

The vacation pay received by the claimant was not reported in a proper manner through the Workforce Development Department. Proper application of the vacation pay would prevent the claimant from receiving benefits for the two benefit weeks between January 25, 2004 and February 14, 2004. The claimant received benefits in the amount of \$171.00 for the benefit week ending January 31, 2004, but did not receive benefits for the benefit week ending February 7, 2004. The claimant did receive benefits for the benefit week ending February 14, 2004 in the amount of \$241.00.

The Workforce Development Department has offset benefits in the amount of \$241.00 during the benefit week ending February 21, 2004 and \$155.00 during the benefit week ending February 28, 2004.

REASONING AND CONCLUSIONS OF LAW:

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 evidence in the record clearly establishes that the claimant inadvertently failed to report vacation pay in an appropriate manner that he received from Colorfx Marketing Services in a total amount of \$825.47 to be applied to the period from January 28, 2004 through February 11, 2004.

Proper application of the vacation pay received by the claimant would preclude him from receiving unemployment insurance benefits for the two weeks between January 25, 2004 and February 14, 2004. The claimant is therefore determined to be overpaid benefits in said amount for the two benefit weeks ending February 14, 2004.

It is noted for the record that the Workforce Development Department has recouped the overpayment amount by withholding the appropriate portion of benefits in the amount of \$296.00 from the benefits due to the claimant for the two benefit weeks ending February 28, 2004.

DECISION:

The unemployment insurance decision dated February 23, 2004, reference 02, is affirmed. Khambong K. Khounlo is overpaid benefits in the amount of \$396.00 for the two weeks between January 25, 2004 and February 14, 2004. The Workforce Development Department has recovered the overpayment amount by deducting appropriate amount of benefits due to the claimant for the two benefit weeks ending February 28, 2004.

kjf/b