

**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**

**DARLENE B MITCHELL
807 FIRST AVE SW
OELWEIN IA 50662**

**TYSON RETAIL DELI MEATS
c/o TALX UCM SERVICES INC
PO BOX 283
SAINT LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-07679-S2T
OC: 06/19/05 R: 04
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 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Darlene Mitchell (claimant) filed an appeal from a decision dated July 25, 2005 (reference 02). The decision found she was overpaid unemployment benefits in an amount of \$81.00 for the week ending June 25, 2005, because of the receipt of vacation pay from Tyson Retail Deli Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2005. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant did correctly report the receipt of \$88.00 in vacation pay for the week ending June 25, 2005.

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 administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$81.00 pursuant to Iowa Code section 96.3-7 as the claimant did correctly report vacation pay for the week ending June 25, 2005.

DECISION:

The July 25, 2005, reference 02, decision, is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of \$81.00.

bas/kjw