

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANNE BRABAND
Claimant

APPEAL NO. 09A-UI-07966-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 01/25/09
Claimant: Appellant (1)**

Iowa Code section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Roxanne Braband filed a timely appeal from the May 28, 2009, reference 03, decision that she was overpaid \$361.00 in benefits for the week ending February 7, 2009 based on a conclusion that Ms. Braband had received vacation pay deductible from that week. After due notice was issued, a hearing was held on June 18, 2009. Ms. Braband participated. Exhibits A and B and Department Exhibits D-1, D-2, and D-3 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of unemployment insurance benefits paid to the claimant and wages reported by the claimant. The hearing in this matter was consolidated with the hearing in Appeal Numbers 09A-UI-07964-JTT and 09A-UI-07965-JTT.

ISSUE:

Whether the claimant was overpaid \$361.00 in benefits for the week ending February 7, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roxanne Braband was employed by General Casualty Company of Wisconsin as a full-time Unit Claim Manager from May 2005 until January 30, 2009, when the employer laid her off. Ms. Braband last performed work for the employer on Friday, January 30, 2009. At the time Ms. Braband separated from the employment, she had accrued, but not yet used, vacation pay benefits totaling \$1,157.16. The employer paid Ms. Braband for these benefits by direct deposit on February 6, 2009.

Ms. Braband established a claim for unemployment insurance benefits that was deemed effective January 25, 2009, the Sunday of the week in which Ms. Braband applied for benefits. Ms. Braband's weekly benefit amount was set at \$361.00. For the week ending January 31, 2009, Ms. Braband reported wages equal to or greater than \$999.00 and received no benefits. For the week ending February 7, 2009, Ms. Braband reported \$77.00 in wages and received \$361.00 in unemployment insurance benefits. The reported wages were from a part-time job. For the week ending February 14, 2009, Ms. Braband reported vacation pay that equaled or exceeded \$999.00 and received no benefits. For the week ending February 21, 2009,

Ms. Braband reported \$453.00 in wages and received no benefits. The reported wages were from a part-time job. Ms. Braband continued to claim benefits through the week that ended March 28, 2009 and reported no additional wages; Ms. Braband received no benefits for these weeks.

On February 3, 2009, Workforce Development mailed a Notice of Claim concerning Ms. Braband to the employer. The Notice of Claim set forth a February 13, 2009 deadline for the employer's response. On February 5, 2009, an employer representative completed information on the Notice of Claim form. The employer did not protest the claim. The employer provided information concerning benefits paid to Ms. Braband in connection with the separation. The employer included the \$1,157.16 vacation pay amount. In the space provided for the employer to designate the period to which the vacation pay should be applied when redetermining Ms. Braband's eligibility for unemployment insurance benefits, the employer merely indicated that the vacation pay was paid on February 6, 2009. Workforce Development received the employer's faxed response on February 9, 2009.

A Workforce Development representative redetermined Ms. Braband's eligibility for unemployment insurance benefits in light of the information provided by the employer. The representative applied the entire vacation pay amount, \$1,157.15, to the five working days in the week that ended February 7, 2009. Because this amount exceeded Ms. Braband's weekly benefit amount, the representative concluded that Ms. Braband was not eligible for benefits for the week and that the \$361.00 in unemployment insurance benefits disbursed for that week constituted an overpayment.

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 establishes that the employer made a timely and accurate report of the amount of vacation and when it was paid, but did not designate the period to which the vacation pay benefit should be applied when redetermining Ms. Braband's eligibility for unemployment insurance benefits. In the absence of such information from the employer, the Workforce Development representative followed the requirements of the statute by applying the entire vacation pay amount to the five working days that immediately followed the last day Ms. Braband performed work for the employer. Since the last day worked was Friday, January 30, 2009, the immediately following five working days were Monday through Friday, February 2-6, 2009. Because the correctly apportioned vacation pay amount exceeded Ms. Braband's weekly benefit amount, the representative correctly concluded that Ms. Braband was not eligible for unemployment insurance benefits for the week that ended February 7, 2009.

In addition, the Workforce Development representative correctly concluded that Ms. Braband was overpaid \$361.00 in benefits for the week ending February 7, 2009.

Since Ms. Braband reported the entire vacation pay amount in connection with her weekly report for the week ending February 14, 2009, the Agency should factor this in when determining whether the overpayment of benefits for the week ending February 7, 2009 has been recovered.

DECISION:

The Agency representative's May 28, 2009, reference 03, decision is affirmed. The claimant was overpaid \$361.00 in benefits for the week ending February 7, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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