

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH A BENGE
Claimant

APPEAL NO. 14A-UI-04329-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/12/14
Claimant: Appellant (1)**

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Sarah Bengé filed a timely appeal from the April 16 2014, reference 04, decision that she was overpaid \$418.00 in benefits for the four weeks between January 26, 2014 and February 22, 2014, due to receipt of severance pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on May 14, 2014. Ms. Bengé participated. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-04328-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Department Exhibits D-1, D-2 and D-3 into evidence.

ISSUES:

Whether Ms. Bengé was overpaid \$418.00 in benefits for the four weeks between January 26, 2014 and February 22, 2014, due to receipt of severance pay that was deductible from her unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sarah Bengé was employed by the D.A.V. as a full-time assistant manager and last performed work for the employer on Thursday, January 16, 2014. Ms. Bengé's salary was \$32,000.00 annually. This corresponded to gross pay of \$1,230.77 every two weeks. The employer paid Ms. Bengé biweekly. Though Ms. Bengé performed work for the employer only through Thursday of the last week of employment, the employer paid Ms. Bengé her full weekly wages for that week that ended January 18, 2014, \$615.00. In connection with Ms. Bengé's separation from the employment, the employer her with \$2,666.67 in severance pay. That amount was the equivalent of one month's salary. The employer did not ask Ms. Bengé to waive any rights as a condition of receiving the severance payment.

Ms. Bengé established a claim for unemployment insurance benefits that was deemed effective January 12, 2014, the Sunday that started the week in which she applied for benefits. Workforce Development calculated Ms. Bengé's weekly benefit amount at \$112.00. For the week that ended January 18, 2014, Ms. Bengé reported wages that exceeded her weekly

benefit amount and did not receive any benefits. For the week that ended January 25, 2014, Ms. Bengé reported the entire severance pay amount and did not receive any benefits. Ms. Bengé reported the amount as vacation because the reporting procedure did not allow her to designate the amount as severance. For the next several weeks, Ms. Bengé reported zero wages and was paid \$112.00 in weekly benefits. The benefits paid for the period

On January 22, 2014, Iowa Workforce Development, Iowa Workforce Development mailed a notice of claim to the employer to alert the employer of Ms. Bengé's claim for benefits. The notice of claim provided February 3, 2014 as the deadline for the employer's response. Workforce Development received the employer's response by fax on January 31, 2014. The employer did not protest the claim. The employer did provide information concerning the final wages, the severance pay amount, and information indicating the severance amount represented one month's wages. The employer also indicated that there had been no severance pay agreement.

Iowa Workforce Development used the information provided by the employer to recalculate Ms. Bengé's unemployment insurance benefit eligibility. The Workforce Advisor assigned the severance pay to the period of January 17, 2014 through February 16, 2014. The Workforce Advisor apportioned \$123.04 of the severance pay, eight hours, to the benefit week that ended January 18, 2014. Since Ms. Bengé had received no benefits for that week due to reported wages, the apportionment of severance to that week had no further impact on her benefit eligibility. The Workforce Advisor apportioned a week's worth of severance pay, which they correctly calculated to be \$615.00 to the weeks ending January 25, and February 1, 8, and 15, 2014. Because Ms. Bengé had reported the entire amount of the severance pay for the week that ended January 25 and, therefore, had received no benefits for that week, the apportioned severance pay did not change the determination that she was not eligible for benefits for that week. However, because Ms. Bengé had received \$112.00 in benefits for the weeks ending February 1, 8 and 15, the apportionment of \$615.00 in severance pay to those weeks reduced her benefit eligibility during those weeks to zero. In keeping with the employer's directive on the notice of claim form, that the severance represented a month's wages, the Workforce Development representative apportioned a small amount, \$81.98 in severance pay to the week that ended February 22, 2014. The Workforce Advisor concluded that the apportionment for that week reduced Ms. Bengé's benefit eligibility by \$82.00 to \$30.00 during that week.

Workforce Development subsequently "off-set" or withheld \$224.00 in benefits that would otherwise have been disbursed to Ms. Bengé for the two-week period of April 5-19, 2014, to recover a portion of that the agency concluded was an overpayment of benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is determined ineligible for benefits, the claimant must repay the benefits even if the benefits were received by the claimant through no fault of the claimant. Because Ms. Bengé was not eligible for benefits during the weeks that ended February 1, 8 and 15, 2014, the \$336.00 in benefits paid to her for those weeks constitute an overpayment of benefits that Ms. Bengé must repay. Because Ms. Bengé received \$112.00 in benefits for the week ending February 22, 2014, but was only eligible for \$30.00 in benefits that week, the additional \$82.00 in benefits she received for that week constitutes an overpayment that she must repay. Ms. Bengé was overpaid \$418.00 in benefits for the four weeks between January 26, 2014 and February 22, 2014, due to receipt of severance pay that was deductible from her unemployment insurance benefits. A portion of the overpayment, \$224.00, has been recovered through an offset of benefits. Ms. Bengé must repay the remaining balance of the overpayment, \$194.00.

DECISION:

The claims deputy's April 16 2014, reference 04, decision is affirmed. The claimant was overpaid \$418.00 in benefits for the four weeks between January 26, 2014 and February 22, 2014, due to receipt of severance pay that was deductible from her unemployment insurance benefits. A portion of the overpayment has been recovered through an offset of benefits. The claimant must repay the remaining balance of the overpayment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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