

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

FRIEDA HEARD
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PO BOX 625
LE CLAIRE IA 52753-0625

MIDLAND PRESS CORPORATION
5440 CORPORATE PARK DR
DAVENPORT IA 52807

Appeal Number: 04A-UI-00198-RT
OC: 12-07-03 R: 04
Claimant: Appellant (4)

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 96.5-5-a – Other Compensation (Severance Pay or Other Payments)
Section 96.3- 7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Frieda Heard, filed a timely appeal from an unemployment insurance decision dated December 31, 2003, reference 01, determining that she was overpaid unemployment insurance benefits because she failed to report or incorrectly reported severance pay. After due notice was issued, a telephone hearing was held on January 28, 2004, with the claimant participating. Susan Blaskovich, Human Resources Manager, participated in the hearing for the employer, Midland Press Corporation. Department Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibits 1 and 2, the administrative law judge finds: The claimant's last day of employment with the employer was October 27, 2003. Thereafter, she was laid off for, and as a result, of a reduction in force. As a result of her separation the claimant received 3½ days of vacation pay at \$791.62 total, or \$226.18 per day. The claimant then received one day of holiday pay in that amount and then 25 days, or five weeks of severance pay in that daily amount, for a total of \$5,654.50. In all, the claimant received 29½ days of pay at \$226.00 per day beginning with October 28, 2003, which would have been her first day of unemployment following her last day of employment. The claimant had no weekend responsibilities. The last day of severance pay and all of the other pay would be December 8, 2003, when the claimant would have received one-half day of severance pay, or \$113.00 for that day. This would be for benefit week ending December 13, 2003. The claimant filed for unemployment insurance benefits effective December 7, 2003. The claimant's weekly benefit amount is \$322.00 per week. For benefit week ending December 13, 2003, the claimant reported incorrectly earnings of \$196.00, which reduced her benefits for that week to \$206.00. Workforce Development then determined that the claimant was overpaid this amount because she received severance pay in addition to the \$196.00, which would nullify benefits for that week. Therefore, of the \$322.00 weekly benefit amount to which the claimant would have been entitled for benefit week ending December 27, 2003, \$206.00, was offset against this alleged overpayment, paying the claimant only \$116.00 for that week. Thereafter, the claimant has received \$322.00 per week, including benefit week ending December 20, 2003.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant received severance pay and other pay and, if so, whether the severance pay was deducted for the correct period from the claimant's unemployment insurance benefits. The claimant did receive severance pay and other pay but it was not properly deducted for the correct period.
2. Whether the claimant is overpaid unemployment insurance benefits. The claimant is not overpaid unemployment insurance benefits in the amount of \$206.00 for benefit week ending December 13, 2003, but was, rather, underpaid \$3.00 for that week. Since \$206.00 was later incorrectly offset from unemployment insurance benefits paid to the claimant for benefit week ending December 27, 2003, the claimant is entitled to have refunded to her \$209.00.

Iowa Code Section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
 - a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
 - b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

The administrative law judge concludes that the claimant received vacation pay, holiday pay, and severance pay in the amount of \$226.18 per day for 29½ days as set out in the Findings of Fact, beginning with October 28, 2003, which was her first day of unemployment following her last day of employment. The claimant would not be entitled to receive unemployment insurance benefits for six weeks, from benefit week ending November 1, 2003 to benefit week ending December 6, 2003 because of these payments. For benefit week ending December 13, 2003, the claimant would have received one-half day of severance pay, or \$113.00, which would exhaust the claimant's severance pay and other pay. The claimant had no weekend responsibilities. Since the claimant's weekly benefit amount is \$322.00, the claimant would be entitled to benefits for benefit week ending December 13, 2003, in the amount of \$209.00. The claimant had no earnings during any relevant or material time hereto. The claimant was underpaid unemployment insurance benefits for benefit week ending December 13, 2003, in the amount of \$3.00, because she should have received \$209.00 for that week, her weekly benefit amount of \$322.00 less \$113.00 in severance pay and the claimant only received \$206.00 for that week. Further, since \$206.00 was offset from benefit week ending December 27, 2003, the claimant is entitled to have refunded to her \$209.00 in unemployment insurance benefits.

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 was underpaid unemployment insurance benefits in the amount of \$3.00 for benefit week ending December 13, 2003 and therefore, is not overpaid any unemployment insurance benefits. Further, since \$206.00 was offset against an alleged overpayment, the claimant is entitled to \$209.00 in unemployment insurance benefits refunded to her. Accordingly, the administrative law judge concludes that the claimant is not overpaid unemployment insurance benefits in the amount of \$206.00 for one week between December 7, 2003 and December 13, 2003.

DECISION:

The representative's decision of December 31, 2003, reference 01, is modified. The claimant, Frieda Heard, is entitled to receive unemployment insurance benefits in the amount of \$209.00 for benefit week ending December 13, 2003 and \$322.00 for each benefit week thereafter, so long as she is otherwise eligible. Since the claimant only received \$206.00 in benefits for the benefit week ending December 13, 2003, she has been underpaid \$3.00 and further, since \$206.00 was offset erroneously, the claimant is entitled to have \$209.00 refunded to her for benefit week ending December 13, 2003. The claimant did receive vacation pay and other pay but it was not properly deducted from her benefits. As a result of this decision the claimant is not overpaid unemployment insurance benefits and is entitled to a refund of \$209.00

b/b