

**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**

**MASON A JORGENSEN  
414 3RD ST  
WASHBURN IA 50706**

**IOWA AUTO REBUILDERS  
2550 RANCHERO RD  
WATERLOO IA 50701**

**Appeal Number: 04A-UI-03065-MT  
OC: 02/22/04 R: 01  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-5 - Severance Pay  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated March 12, 2003, reference 01, that concluded claimant was ineligible for the one week ending February 28, 2004 for unemployment insurance benefits in the amount of \$111.00. A telephone hearing was scheduled and held on April 8, 2004 pursuant to due notice. Claimant did participate. Employer participated by Jerry Walbaum, President, and Rachel Gindling, Office manager.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with employer was separated on February 25, 2003 and claimant received regular pay in the amount of \$240.00 based upon a rate of pay at \$10.00 per hour for the week ending February 28, 2004. Employer did designate the period of time to which the pay was to be applied. This was regular pay and not severance pay. No severance pay was made of that week. Employer designated \$347.25 as severance pay but in fact it was regular pay for the last two weeks of work. Confusion existed because of the mid week payroll dates.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that severance pay was not deducted for the correct period.

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 paragraphs "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.

Because employer did designate a time period to which the pay is to apply, the entire amount was incorrectly deducted from the second week of benefits following the separation. The pay designated was regular pay and only \$240.00 was attributable to the second week. Claimant properly reported the pay at \$240.00.

The second issue is whether claimant is overpaid 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.

Claimant is not overpaid benefits in the amount of \$111.00.

DECISION:

The March 12, 2003, reference 01, decision is reversed. The severance pay was not deducted for the correct period. Claimant is not overpaid benefits in the amount of \$111.00.

mdm/kjf