

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>KELLY J SANKEY</b> Claimant  <b>IOWA WORKFORCE DEVELOPMENT DEPARTMENT</b>	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO: 07A-UI-08666-DWT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 12/24/06 R: 04</b> <b>Claimant: Appellant (4)</b></div>
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Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Kelly J. Sankey (claimant) appealed a representative's September 6, 2007 decision (reference 03) that concluded she had been overpaid \$242.00 in benefits she received for the week ending August 25, 2007. The overpayment occurred as the result of a representative's decision (reference 02) that held her ineligible to receive benefits for the weeks ending August 25 and September 1, 2007. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on September 25, 2007. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Has the claimant been overpaid \$242.00 for the week ending August 25, 2007?

**FINDINGS OF FACT:**

The claimant reopened her claim for benefits during the week of August 19, 2007. She filed claims for the weeks ending August 25, September 1, 8 and 15, 2007. The claimant reported she had received severance/vacation pay for the weeks ending September 1 and 8. Since the claimant had not yet received any severance pay, she did not report any severance payment for the week ending August 25.

The claimant received \$242.00 in benefits for the week ending August 25, 2007. She did not receive any benefits for the weeks ending September 1 and 8 because she reported she had received a severance payment that exceeded her maximum weekly benefit amount. The claimant filed a claim for the week ending September 15. The Department concluded the claimant was eligible to receive benefits for this amount, but did not send the claimant her benefits. Instead, the Department used benefits the claimant was legally entitled to receive this week to offset the \$242.00 overpayment for the week ending August 25.

Based on the decision for appeal 07A-UI-08665-DWT, the claimant is legally entitled to receive benefits for the week ending September 8 and she has not received any benefits for this week.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible to receive unemployment insurance benefits for any week in which she claims unemployment insurance benefits and has severance pay attributable to the same week that exceeds her weekly benefits amount. If the amount of severance pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the severance payment applied to the week. Iowa Code section 96.5-5. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar days after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1). Severance pay if properly reported is considered a wage replacement, which reduces the amount of unemployment insurance benefits payable.

In this case, the claimant received severance pay and the employer timely designated the period to which the pay was attributable as August 17 through 30, 2007. There is nothing unreasonable about this designation. Even though the claimant did not receive the severance payment until after August 28, the severance pay is still attributable to August 17 through 30. Therefore, the claimant is not eligible to receive benefits for the weeks ending August 25 and September 1, 2007.

Since the representative's decision was made before the claimant submitted her claim for the week ending September 8, the representative did not know that the claimant reported the severance payment during this week. As a result of reporting the receipt of severance pay for the week ending September 8, the claimant did not receive any benefits. The claimant, however, is eligible to receive benefits for the week ending September 8 because she incorrectly reported severance payment for this week instead of the week ending August 25, 2007. (If the Department had not used the claimant's benefits for the week ending September 15 to offset the overpayment that occurred for the week ending August 25, the benefits the claimant was legally entitled to receive for the week ending September 8 could have been used to offset the established overpayment.)

**DECISION:**

The representative's September 6, 2007 decision (reference 03) is modified in the claimant's favor. The claimant is not legally entitled to receive benefits for the week ending August 25 and has been overpaid \$242.00 for this week. The claimant is, however, legally entitled to receive

benefits for the week ending September 8 and has not yet been paid any benefits for this week. The Department shall send the claimant benefits she is legally entitled to receive for the week ending September 8, 2007.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs