

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

KENDRA K WYATT-KOGER
1845 HUNTINGTON RD
WATERLOO IA 50701

BERGMAN PRECISION INC
3730 E SOUTHERN AVE
PHOENIX AZ 85040-3958

Appeal Number: 04A-UI-10482-CT
OC: 08/01/04 R: 03
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, 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 – Severance Pay

STATEMENT OF THE CASE:

Kendra Wyatt-Koger filed an appeal from a representative's decision dated September 15, 2004, reference 05, which held she had been overpaid job insurance benefits for the week ending September 11, 2004 because of her receipt of severance pay from Bergman Precision, Inc. After due notice was issued, a hearing was held by telephone on October 19, 2004. Ms. Wyatt-Koger participated personally and Exhibit A was admitted on her behalf. The employer participated by Tod Jarrett, Vice President of Office Operations.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Prior to April 13, 2004, Bergman Precision, Inc. made plans to close the office where Ms. Wyatt-Koger worked and to relocate those operations to Arizona. The employer decided to provide incentive payments to certain individuals if they agreed to remain until the office actually closed. Ms. Wyatt-Koger signed an agreement on April 13, 2004 which provided that she would receive five weeks of regular pay if she remained until the office closed. Ms. Wyatt-Koger's last day of work was July 30, 2004, the day the office closed. As agreed, she received five weeks of pay in the gross amount of \$2,400.00.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wyatt-Koger has been overpaid job insurance benefits for the week ending September 11, 2004. The overpayment was based on a finding that she had received severance pay from Bergman Precision, Inc. However, the pay is more properly considered incentive pay or "stay pay." Payments so characterized are only deductible from job insurance benefits if they are for services provided during the same period for which the individual is also claiming job insurance benefits. See 871 IAC 24.13(2)c. Because the payment Ms. Wyatt-Koger received was for services provided for a period prior to when she filed her claim for benefits, none of the \$2,400.00 is deductible from her job insurance benefits. Accordingly, she has not been overpaid for the week ending September 11, 2004.

DECISION:

The representative's decision dated September 15, 2004, reference 05, is hereby reversed. Ms. Wyatt-Koger has not been overpaid \$96.00 in job insurance benefits for the week ending September 11, 2004. Any benefits withheld to repay the overpayment shall be refunded.

cfc/pjs