

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L JONES

Claimant

APPEAL NO. 08A-UI-01927-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EARLE M JORGENSEN COMPANY

Employer

**OC: 01/06/08 R: 04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Jennifer L. Jones (claimant) appealed a representative's February 7, 2008 decision (reference 04) that concluded she was overpaid unemployment insurance benefits for the week ending January 12, 2008, due to the receipt of severance pay from Earle M. Jorgensen Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2008. The claimant participated in the hearing. This appeal was consolidated for hearing with five related appeals: 08A-UI-01925-DT, 08A-UI-01926-DT, 08A-UI-01928-DT, 08A-UI-01929-DT and 08A-UI-01930-DT. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 and Claimant's Exhibit A were entered into evidence. 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:

Was the claimant overpaid unemployment insurance benefits for the week of January 12, 2008 due to the receipt of properly allocated severance pay?

FINDINGS OF FACT:

The claimant started working for the employer on July 2, 2007. She worked Monday through Friday, 8:00 a.m. to 5:00 p.m., at an hourly rate of \$12.00. Her last day of work was January 3, 2008. The claimant established an unemployment insurance benefit year effective January 6, 2008. Her weekly benefit amount was calculated to be \$274.00. The employer's representative responded to the Agency's Notice of Claim by reporting that the claimant had, subsequent to her separation, been paid vacation pay of \$332.64 for 27.72 hours and severance pay of \$288.00 for 24 hours of regular pay and \$5.40 for .30 hours of overtime.

Her final check covered the period from December 31, 2007 through January 6, 2008. During that period, she was paid for 32.0 hours of regular pay, 8.0 of holiday pay (for January 1, 2008), and .80 hour of overtime worked on January 2, 2008. Therefore, she was paid for the full

40-hour week, with regular pay for each of the four work days that week even though she did not work on January 4, 2008. The final paycheck also included a payment for the claimant's accrued and unused 27.72 hours of vacation pay, in a gross amount of \$332.64. No additional payments were made other than the vacation pay representing time after January 6.

REASONING AND CONCLUSIONS OF LAW:

If severance pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

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.

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.

Technically, the additional day of regular pay for the workweek ending January 4 was a form of "severance pay," but the claimant did not file a weekly claim for the benefit week ending January 5 to which it would have been allocated. The claimant received no severance pay that would be properly allocated to the week ending January 12 or any week thereafter. Therefore, there would be no overpayment of benefits due to the receipt of severance pay. The vacation allocation will be more directly addressed in the concurrently issued decision under 08A-UI-01929-DT.

DECISION:

The representative's February 7, 2008 decision (reference 04) is reversed. The claimant was not overpaid unemployment insurance benefits due to the receipt of severance pay properly allocated to the week ending January 12, 2008.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw