

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

RANDY FRANK

Claimant,

and

IOWA WORKFORCE DEVELOPMENT

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HEARING NUMBER: 07B-UI-08062

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 17A.12-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

STATEMENT OF THE CASE:

This matter came before the Board on appeal from the claimant who also submitted new and additional information that was both material and relevant to the issue to be determined. Because the claimant provided good cause for his nonparticipation at the hearing, the Board accepted the new and additional information. The Board issued an Order that included these documents for the employer's review and response. The employer has since responded and the Board is now ready to issue its decision.

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Randy Frank, worked for Radio Postville, Inc. from which he was "laid off due to cutbacks on June 25, 2007. He received severance pay for week ending July 7, 2007. The claimant filed a claim for unemployment insurance to which the employer did not contest, but completed the Iowa Workforce Development original report with an incorrect date that the employer paid the claimant severance pay. The claimant, consequently, received an adverse decision that resulted in an overpayment.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.1(113) provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits: *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.*

Here, the employer laid Mr. Frank off June 25, 2007. The employer subsequently issued the claimant severance pay for the week ending July 7, 2007. The employer's error in reporting severance pay for a subsequent week resulted in the claimant's original disqualification. That error was corrected, however, with a letter from the employer who corroborated the claimant's new and additional information that the Board accepted on the claimant's appeal.

DECISION:

The administrative law judge's decision dated September 7, 2007 is **REVERSED**. The claimant's layoff qualified him to receive unemployment insurance benefits. His eligibility begins on July 8, 2007, the date after the week covered by his severance pay. The overpayment created by 07A-UI-08061 no longer exists.

Elizabeth L. Seiser

AMG/fnv

John A. Peno

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

AMG/fnv

Mary Ann Spicer