

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

KIM A BENSER
449 EIGHTH AVENUE SW
CEDAR RAPIDS IA 52402

BERTHEL FISHER & COMPANY
BERTHEL FISHER & COMPANY
FINANCIAL SERVICES
P O BOX 609
701 TAMA STREET BUILDING B
MARION IA 52302-0609

Appeal Number: 04A-UI-10205-BT
OC: 08/01/04 R: 03
Claimant: Appellant (1)

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 – Receipt of Severance
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Kim Benser (claimant) appealed an unemployment insurance decision dated September 10, 2004, reference 03, which held that she was overpaid on her unemployment insurance claim for the one-week period ending August 18, 2004 due to the receipt of severance pay. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on October 13, 2004. The claimant participated in the hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was separated from employment on August 2, 2004. After her separation from employment, she received severance pay in the amount of \$960.00 for the one-week period ending August 28, 2004. She received unemployment insurance benefits for this same period.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is overpaid as a result of severance pay. For the reasons that follow, the administrative law judge concludes the severance pay was deducted for the correct period and the claimant is overpaid in the amount of \$288.00.

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.

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.

The claimant received \$960.00 in severance pay for the one-week period ending August 28, 2004. The claimant is not eligible to receive unemployment insurance benefits during that time. The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$288.00 pursuant to Iowa Code Section 96.3-7.

DECISION:

The unemployment insurance decision dated September 10, 2004, reference 03, is affirmed. Severance pay was deducted correctly. The claimant is not eligible to receive unemployment insurance benefits for the one-week period August 28, 2004. The claimant was overpaid unemployment insurance benefits in the amount of \$288.00.

sdb/s