

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

GARY L BRIDGER
412 DURANT ST APT A
HARLAN IA 51537-1759

J F BLOOM & COMPANY INC
PO BOX 11007
OMAHA NE 68111-0007

Appeal Number: 06A-UI-08007-DT
OC: 07/02/06 R: 01
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 – Severance Pay
Section 96.5-7 – Vacation Pay
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Gary L. Bridger (claimant) appealed a representative's August 2, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits for the week ending July 8, 2006, and that he was overpaid benefits for that week, due to the receipt of severance pay or vacation pay from J. F. Bloom & Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2006. The claimant participated in the hearing. Tim O'Neill appeared on the employer's behalf. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a proper allocation of payments made to the claimant and was there an overpayment of unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 14, 2005. He worked full-time as a salesman for the employer's monument business on a Monday through Friday, eight-hour per day schedule, at the rate of \$10.00 per hour. His last day of work was July 5, 2006. He had worked eight hours each on July 3 and July 5, which entitled him to holiday pay for July 4, 2006.

On July 19, 2006, the employer issued the claimant his final paycheck for a gross amount of \$240.00, representing the two days worked on July 3 and July 5 (\$10.00 x 16 hours), plus holiday pay for July 4 (\$10.00 x 8 hours). The claimant established an unemployment insurance benefit year effective July 2, 2006. His weekly benefit amount was calculated to be \$243.00. He filed a weekly claim for the week ending July 8, 2006 reporting the receipt of wages or other compensation in the amount of \$240.00; he received partial unemployment insurance benefits for that week in the amount of \$63.00.

A notice of the claimant's claim was sent to the employer, to which the employer made a timely response. Under the section "benefits paid to claimant," and further under the subsection "severance pay, dismissal pay, separation allowance, or wages in lieu of notice" the employer reported that "from date 7/3/06" and "thru date 7/6/06" the claimant had received "24 hrs @ 10.00." In issuing the decision under appeal in this case, the representative applied this as an additional amount to the amount the claimant had reported as compensation for the week ending July 8, 2006. Actually, the amount reported by the employer was the same \$240.00 the claimant had already reported; no amounts were paid beyond compensation for the daily work pay and holiday pay already earned by the claimant through July 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

Severance pay and designated vacation pay covering time after a separation from employment are deductible from unemployment insurance benefit eligibility for the period of time covered by the payments.

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 96.5-7 provides:

An individual shall be disqualified for benefits: ...

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not

designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

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.

There was no additional compensation paid by the employer to the claimant for any time after July 5, 2006 that should have been allocated to the week ending July 8, 2006; the payment reported by the employer was the same payment for regular work pay and holiday pay already reported by the claimant which simply had not been issued to him until after the separation. Therefore, the payment of the \$63.00 in partial unemployment insurance benefits for that week was not overpaid to him.

DECISION:

The representative's August 2, 2006 decision (reference 01) is reversed. There were no additional payments made to the claimant attributable to time after July 5, 2006; he properly reported the compensation that he had received for that week. The claimant was eligible for \$63.00 in partial unemployment insurance benefits for the week ending July 8, 2006 and was not overpaid benefits for that week.

ld/cs