

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

LOIS J NEWKIRK  
839 S 20<sup>TH</sup> ST  
FORT DODGE IA 50501

ELECTRICAL MATERIALS  
PO BOX 778  
FORT DODGE IA 50501

Appeal Number: 06A-UI-00014-HT  
OC: 01/09/05 R: 01  
Claimant: Appellant (4)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant, Lois Newkirk, filed an appeal from a decision dated December 28, 2005, reference 02. The decision found the claimant overpaid \$100.00 in unemployment benefits during the three-week period from November 27 through December 17, 2005, due to the receipt of severance pay. After due notice was issued, a hearing was held by telephone conference call on January 18, 2006. The claimant participated on her own behalf. The employer, Electrical Materials, participated by Chief Financial Officer Kris Greenfield.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lois Newkirk was a part-time administrative

assistant with Electrical Materials beginning January 1, 2005. She worked 25 hours per week at \$9.30 per hour.

On December 1, 2005, the claimant was notified her employment had ended but would be paid her regular wage through the last pay period in December, which ended December 21, 2005. Her next paycheck was December 7, 2005, which was for the pay period from November 24 through December 7, 2005. That paycheck represented two days of holiday pay and three days of wages, plus two days of severance pay. She reported \$232.00 in wages for the week ending November 26 and \$143.50 in wages and vacation for the week ending December 3, 2005. She should have reported \$140.00 in wages and \$93.00 in severance pay for the second week. For that week she received \$166.00 in unemployment benefits but was entitled to receive only \$154.00

For the two weeks ending December 17, 2005, she reported \$232.00 in severance/vacation pay and received \$78.00, the amount to which she was entitled after the deduction for this pay.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid. The judge concludes she is.

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.

The claimant is not overpaid \$100.00 for the time period in question, but only \$12.00.

DECISION:

The representative's decision of December 28, 2005, reference 02, is modified in favor of the appellant. Lois Newkirk is overpaid \$12.00 for the three-week period from November 27 through December 17, 2005.

bgh/kjw