

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JILL HEISTERKAMP
Claimant

APPEAL 16A-UI-08439-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUENA VISTA UNIVERSITY
Employer

**OC: 05/08/16
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Jill Heisterkamp (claimant) filed an appeal from the July 21, 2016 (reference 03) unemployment insurance decision that deducted severance pay from benefits. After due notice was issued, a telephone conference hearing was held on August 22, 2016. The claimant participated personally. Buena Vista University (employer) participated through Human Resources Manager Megann Henrich. Claimant's Exhibits A through C were received. Department's Exhibits D-1 and D-2 were received. Official notice is taken of the administrative record, specifically the claimant's database read out (DBRO).

ISSUES:

Is the appeal timely?

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on May 5, 2016 and received "severance" pay but was required to sign a confidential agreement to get that payment. Severance pay is generally defined as money paid to an employee who is dismissed because of a lack of work or other reasons beyond the employee's control but does not require anything further in exchange.

The decision denying the claimant benefits based on her severance pay was mailed on July 21, 2016 to her last known address. However, the claimant was traveling between July 9, 2016 and August 1, 2016 visiting family and expanding her job search to other locales. Her mail was held at the post office until she retrieved it on August 2, 2016. The claimant filed her appeal to the decision the following day.

REASONING AND CONCLUSIONS OF LAW:

Is the appeal timely?

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

The parties have ten days from the date of fact-finder's decision allowing or denying benefits to appeal it. See Iowa Code § 96.6(2). In this case, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

For the reasons that follow, the administrative law judge concludes the claimant did not receive severance pay.

Iowa Code § 96.5(5) provides, in relevant part:

An individual shall be disqualified for benefits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

Iowa Admin. Code r. 871-24.13(3)c provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. It has traditionally excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment.

Since the claimant was expected to agree to the terms of the confidential agreement, payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant, but was for a contractual obligation. Payment in consideration of that obligation is not considered wages. Therefore, the confidential agreement consideration should not be deducted from benefits and the entire amount of "severance" pay was incorrectly defined and deducted. Benefits are allowed effective May 15, 2016.

DECISION:

The July 21, 2016, (reference 03) unemployment insurance decision is reversed. The claimant did not receive severance pay and the contract consideration was incorrectly defined and deducted.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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