

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DYLAN C HAMILTON
Claimant

GGL PROJECTS INC
Employer

APPEAL 18A-UI-00994-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/26/17
Claimant: Appellant (5)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 11, 2018 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits for the five week period ending December 30, 2017 because he was entitled to wages in lieu of notice, severance pay, separation allowance or dismissal pay, which are considered to be wages. The parties were properly notified of the hearing. A telephone hearing was held on February 14, 2018. The claimant, Dylan C. Hamilton, participated personally. The employer, GGL Projects Inc., participated through witness Michael Lai. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents and the employer's statement of protest.

ISSUE:

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:

Claimant was employed full-time for this employer as Vice President of Marketing. He earned a yearly gross salary of \$80,000.00 (\$1,538.46 per week). Claimant was paid bi-monthly. He worked forty hours per week. Claimant filed an initial claim for unemployment insurance benefits effective November 26, 2017. His weekly benefit amount is \$516.00. Claimant filed weekly-continued claims for benefits for the each week-ending December 16, 2017, December 23, 2017, and December 30, 2017.

On November 29, 2017, claimant was given notice that he was going to be laid off and the layoff would be effective December 29, 2017. There was no written or verbal severance agreement that the parties entered into. Claimant was told that he would be paid through December 29, 2017.

Claimant worked for the employer through December 29, 2017 and was permanently separated from employment effective December 29, 2017. Claimant earned wages in excess of his weekly-benefit amount plus \$15.00 from November 26, 2017 through December 9, 2017 and this is why he did not file weekly-continued claims for this period.

On December 13, 2017, claimant received gross wages of \$2,500.00 from the employer. This payment was for wages earned from December 1, 2017 through December 14, 2017. On December 31, 2017, claimant received gross wages of \$2,500.00 from the employer. This was for wages earned from December 15, 2017 through December 29, 2017. There were no additional payments made to claimant during the month of December 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The question in this matter is whether the payments received by claimant in December of 2017 were for wages or severance pay. Wages are deductible from unemployment insurance benefits using a specific formula as set forth in Iowa Code § 96.3(3). In this case, claimant could earn up to 25% of his weekly benefit amount (\$129.00) before any deduction is made. Any amount over 25% is deducted from benefits on a dollar-for-dollar basis. If gross earnings equal or exceed claimant's weekly benefit amount plus \$15.00, no benefit amount will be paid.

Severance pay is deductible from unemployment insurance benefits on a dollar-for-dollar basis as set forth in Iowa Code § 96.5(5)(a)(1), without any allowance of a percentage of non-deductibility.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.5(5) provides:

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.
- (2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
- (3) 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 subparagraph, 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.

- b. 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", subparagraph (1), (2), or (3), 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 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. In this case, no pay of any kind in addition to his wages was paid to the claimant from December 10, 2017 through December 30, 2017. Claimant simply continued to earn wages for work performed through December 29, 2017. Claimant's wages earned each week from his initial claim date of November 26, 2017 through December 30, 2017 clearly exceed his weekly benefit amount, plus \$15.00. As such, benefits are denied for the five-week period beginning November 26, 2017 through December 30, 2017, due to claimant earning wages in excess of his weekly benefit amount, plus \$15.00.

Alternatively, even if the payments made in December of 2017 were found to be severance pay, that amount would be deducted on a dollar-for-dollar basis. The claimant would still be ineligible for benefits for the three-week period ending December 30, 2017 in which he alleged severance pay was received.

DECISION:

The January 11, 2018 (reference 02) unemployment insurance decision is modified with no change in effect. The claimant received wages in excess of his weekly benefit amount plus \$15.00 during the five-week period ending December 30, 2017, which made him ineligible for unemployment insurance benefits.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs