

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD G BALLINGER
Claimant

EATON CORPORATION
Employer

APPEAL 16A-UI-13409-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/15
Claimant: Appellant (1)

Iowa Code § 96.5(5) Severance Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 9, 2016, (reference 02, amending reference 01) unemployment insurance decision that found claimant eligible for a reduced amount of unemployment insurance benefits for the week ending October 29, 2016 due to his receipt of unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2016. Claimant participated. Employer did not participate.

ISSUE:

Is the claimant eligible for partial unemployment insurance benefits for the week ending October 29, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked on June 27, 2016 and was paid \$172.00 dollars in wages for that day. He was given \$14,620.00 dollars in severance pay that was considered deductible from his unemployment insurance benefits in a decision issued on August 24, 2016 in appeal number 16A-UI-8324-H2T. The decision determined that the claimant was not eligible for unemployment insurance benefits through the week ending October 22, 2016. The agency later amended their calculation when they learned that the claimant had been paid for one day of wages in the amount of \$172.00 during his last week of employment. As severance pay is deductible on a dollar-per-dollar basis, the agency determined that the claimant was required to have an additional \$172.00 in severance pay deducted from his unemployment insurance benefits.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was correctly deducted from benefits.

Iowa Code § 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 Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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.

An individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits which would otherwise be due, the

individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

The Unemployment Insurance Appeals Section 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. The Appeals Section has historically 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. The severance pay deducted from the claimant's unemployment insurance benefits was for sums paid to him regardless of whether he signed a release. The agency just recalculated as they were not aware the claimant was paid wages in the amount of \$172.00 when his severance deduction was initially calculated. Thus the 172.00 dollars was not deducted from the claimant's unemployment insurance benefits as it should have been. The \$172.00 does represent severance pay under the definition set out above and is thus deductible from the claimant's unemployment insurance benefits.

DECISION:

The December 9, 2016, (reference 02 amending reference 01), decision is affirmed. The claimant was paid \$172.00 in severance pay that was deductible from his unemployment insurance benefits. For the week ending October 29, 2016 the claimant was entitled to only \$275.00 in benefits.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs