

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ARIBEL D LEON-LYNN

Claimant

APPEAL NO: 06A-UI-09112-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES AREA METROPOLITAN
PLANNING ORGANIZATION**

Employer

**OC: 07-23-06 R: 02
Claimant: Appellant (1)**

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 6, 2006, reference 02, decision that deducted severance pay from her unemployment insurance benefits. After due notice was issued, a hearing was held on September 26, 2006. The claimant did participate. The employer did not participate, but did submit exhibits to be considered at the hearing. Employer's Exhibits A through E were entered and received into the record. Department's Exhibit D-1 was received. Claimant's Exhibit One was entered and received into the record.

ISSUE:

Was the severance pay deducted for the correct period?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was separated on July 21, 2006, and received severance pay in the amount of \$2250.00. The employer did designate the period of time to which the severance pay was to be applied as from July 24, 2006 through August 6, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for the correct period.

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.

871 IAC 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 claimant received her regular pay for all work performed. Additionally she was paid severance pay from July 24, 2006 through August 6, 2006. Because the claimant received severance pay after she was discharged, that payment must be deducted from her unemployment insurance benefits. Therefore, the entire amount of severance pay was correctly deducted for two weeks ending August 5, 2006.

DECISION:

The September 6, 2006, reference 02, decision is affirmed. The severance pay was deducted for the correct period.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/cs