

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRETT F SMITH**  
Claimant

**APPEAL NO. 09A-UI-02813-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAZETTE COMMUNICATIONS INC**  
Employer

**Original Claim: 12/21/08  
Claimant: Appellant (2)**

Iowa Code § 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 19, 2009, reference 01, decision that deducted severance pay from benefits without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a telephone conference hearing was held on March 18, 2009. Claimant participated. Employer participated through Shonna Woods.

**ISSUE:**

The issue is whether claimant received 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 Friday, November 21, 2008, and received vacation pay of \$2,385.72, equivalent to 14 days' work ending December 11, 2008. Employer paid him "severance" pay in the amount of \$5,712.53, equivalent to a base rate of two weeks plus one week for each year of service based upon five years of service, equivalent to a rate of pay of \$816.00 per week. In order to receive that payment, he was required to sign a liability waiver and confidentiality agreement.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the severance pay was incorrectly deducted.

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.

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.

871 IAC 24.13(4)b provides:

(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

- b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

Since claimant is expected to waive liability and maintain confidentiality about the separation, payment was not for a service provided in exchange for wages but a contractual obligation and payment in consideration of that obligation is not considered wages. Therefore, the liability waiver and confidentiality agreement consideration should not be deducted from benefits and

the entire amount of severance pay was incorrectly defined and deducted. Benefits are allowed effective December 21, 2008.

**DECISION:**

The February 19, 2009, reference 01, decision is reversed. The claimant did not receive severance pay and the contract consideration was incorrectly defined and deducted.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw