

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN J HEEREN
Claimant

APPEAL NO. 09A-UI-09119-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GAZETTE COMMUNICATIONS INC
Employer

OC: 02/15/09
Claimant: Appellant (2)

Section 96.5-5-a – Severance Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated June 16, 2009, reference 01 that disqualified him for the seven weeks ending April 4, 2009 due to receiving severance pay. A hearing was held on July 13, 2009. The claimant participated. Janie Ricklefs, HR Manager, participated for the employer.

ISSUE:

The issue is whether the claimant received seven weeks of severance pay.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant was laid-off by Gazette Communications on January 20, 2009. He entered into a Severance Agreement with his employer. The Agreement provides that the claimant releases his employer from all claims and/or liability in order to receive seven weeks of severance pay totaling \$5,497.20. The claimant did receive his accumulated vacation pay of \$1,022.79 that caused him to wait two weeks before filing his unemployment claim. Department advisors told the claimant he did not have to report the severance.

The employer protested the claimant's claim by applying the gross severance pay to a nine-week period ending April 3, 2009.

REASONING AND CONCLUSIONS OF LAW:

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 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.

The administrative law judge concludes that the claimant is not required to report the lump sum payment of \$5,497.20, because it is not severance pay.

In order for the claimant to receive the lump sum payment, he was required to release the employer from any claim and waive any liability arising out of his employment. Payments of this nature are not considered as severance though the employer has labeled it as such. The payment was labeled as severance, but the waiver/claim release clause means it was paid for considerations beyond tenure or service. The claimant waited to file his claim until the vacation pay had been exhausted.

DECISION:

The decision of the representative dated June 16, 2009, reference 01, is reversed. The claimant did not receive severance pay, and no disqualification is imposed. The claimant is entitled to benefits effective February 15, 2009, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css