

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY A LEACH**  
Claimant

**APPEAL NO. 15A-UI-12834-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINDING HILLS APTS**  
Employer

**OC: 09/20/15**  
**Claimant: Appellant (4)**

Iowa Code Section 96.5(7) – Vacation Pay  
Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Jeffrey Leach filed a timely appeal from the November 9, 2015, reference 01, decision that denied benefits for the four-week period of September 20, 2015 through October 17, 2015, based on an Agency conclusion that he had received or was entitled to receive severance pay or the equivalent that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on December 9, 2015. Mr. Leach participated. Carla Minnich represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-12835-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence. The parties waived formal notice on the vacation pay issue.

**ISSUES:**

Whether the claimant received vacation pay that was deductible from his unemployment insurance benefits.

Whether the claimant received severance pay that was deductible from his unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeffrey Leach was employed by Winding Hills Apartments as a full-time maintenance technician and last performed work for the employer on Tuesday July 28, 2015. Mr. Leach performed 16 hours of work for the employer during the week of July 26-August 1, 2015. Mr. Leach's final rate of pay was \$20.25 per hour. At the time Mr. Leach separated from the employment, he had accrued, but not yet used, 119.5 hours of vacation pay. The value of the vacation pay was \$2,419.88. The employer paid the vacation pay to Mr. Leach through a check issued to Mr. Leach on August 12, 2015. In connection with the separation from the employment, the employer agreed to pay Mr. Leach the equivalent of 360 hours' wages in severance pay. That

represented nine weeks' wages. The value of the severance pay was \$7,290.00. The employer agreed to pay the severance pay bi-weekly through September 30, 2015. The employer provided the severance pay without requiring any waiver of writes or separation agreement from Mr. Leach. The employer paid the amounts to Mr. Leach as promised.

Mr. Leach established a claim for unemployment insurance benefits that was effective September 20, 2015. Workforce Development calculated Mr. Leach's weekly unemployment insurance benefit amount to be \$463.00. During the weeks that ended September 26 and October 3, 2015, Mr. Leach reported \$810.00 in wages and received zero unemployment insurance benefits. During the weeks that ended October 10, 17 and 24, 2015, Mr. Leach reported zero wages and received \$463.00 in weekly benefits. The total amount of unemployment insurance benefits disbursed to Mr. Leach was \$1,389.00.

On September 28, 2015, Iowa Workforce Development mailed a notice of claim to the employer. The notice of claim provided an October 8, 2015 deadline for the employer's response. Workforce Development received the employer's response on October 1, 2015. The employer did not protest the claim. The employer provided information concerning the 16 hours of work that Mr. Leach had performed during the week that included July 28, 2015. The employer stated the value of those wages at \$324.00. In the space provided for vacation pay information, the employer indicated that the employer had paid Mr. Leach \$2,419.88 for 119.50 hours of accrued vacation. The employer did not designate the period to which the vacation pay should be applied. The employer left those blanks empty despite the warning on the notice of claim that, "Failure to provide the time period to which the vacation pay applies shall result in the entire amount being applied to the 5 working days following the last day worked." The employer provided information concerning the severance pay. The employer indicated that the employer had paid Mr. Leach \$7,290.00 for 360 hours of severance pay or the equivalent. The employer did not designate the period to which the severance pay should be applied.

A Workforce Development claims deputy used the information provided by the employer and concluded that Mr. Leach was not eligible for benefits for the four-week period of September 20, 2015 through October 17, 2015, based on his receipt of the severance pay.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-7 provides:

An individual shall be disqualified for benefits: ...

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended

period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

Mr. Leach did indeed receive \$2,419.88 in vacation pay in connection with his separation from the employment. The employer provided timely information regarding the vacation pay amount, but did not designate the period to which the vacation pay should be applied. Accordingly, the statute required that the vacation pay be apportioned to the first five working days following the last day of the employment. If one takes the \$2,419.88 and divides it by five days, one arrives at the \$483.98 (rounded to \$484.00) that was to be apportioned to Wednesday, Thursday and Friday during the week that ended August 1, 2015 and to Monday and Tuesday of the week that ended August 8, 2015. Because this period fell before the effective date of the claim, the apportionment of the vacation pay had no impact on Mr. Leach's claim for benefits, other than it needed to be apportioned before the Agency could apportion the severance pay.

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 voluntary 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 evidence in the record indicates that Mr. Leach did indeed receive severance pay within the meaning of the unemployment insurance law. Accordingly, the severance pay was deductible from his unemployment insurance benefit eligibility.

The employer provided timely information concerning the amount of the severance pay. The employer also provided timely information concerning the number of hours (360) of wages represented by the severance pay. A reasonable person could readily see, based on the information provided by the employer in the severance paragraphs and at other places on the notice of claim form, that the employer intended the severance pay to represent nine weeks of wages. Accordingly, those nine weeks' of severance pay should have been tacked on to the period immediately following the period affected by the vacation pay. Since the last day for which vacation pay should have been apportioned was Tuesday, August 4, 2015, the severance pay should have been apportioned to the period beginning Wednesday, August 5, 2015. A reasonable person could readily discern from the information provided by the employer that the appropriate amount to be apportioned to each Monday-Friday working day, beginning, Wednesday, August 5, 2015, was \$162.00. Accordingly, \$486.00 in severance pay should have been apportioned to the week that ended August 8, 2015. In addition, \$810.00 should have been apportioned to the eight weeks that ended August 15, 22, and 29, September 5, 12, 19, and 26, and October 3, 2015. The remaining two days of apportioned severance pay, \$324.00 should have been apportioned to the Monday and Tuesday of the week that ended October 10, 2015. Because the weeks through September 19, 2015 predated the effective date of the unemployment insurance claim, the apportionment of severance pay to those weeks would have no effect on Mr. Leach's unemployment insurance claim. However, because the weeks that ended September 26 through October 10, 2015, fell within the claim period, those would have an impact Mr. Leach's unemployment insurance benefit eligibility. The \$810.00 apportioned to the weeks that ended September 26 and October 3, 2015, reduced Mr. Leach's

unemployment insurance benefit eligibly to zero for those weeks. The \$324.00 that should have been apportioned to the week that ended October 10, 2015 should have reduced Mr. Leach's eligibility for benefits that week by \$324.00, from \$463.00 to \$139.00. The apportionment of severance pay should have had no impact on the unemployment insurance claim beyond the week that ended October 10, 2015.

**DECISION:**

The November 9, 2015, reference 01, decision is modified as follows. The claimant received vacation pay for a period that predated his claim for unemployment insurance benefits and was not deductible from benefits during the period of his claim. The claimant received severance pay, some of which was deductible from the period of his claim. The claimant was not eligible for benefits for the weeks ending September 26 and October 3, 2015, because the severance pay that the law required be apportioned to those weeks exceeded his weekly unemployment insurance benefit amount. The claimant received \$324.00 in severance pay that the law required be apportioned to the benefit week that ended October 10, 2015 and that reduced his benefit eligibility for that week from \$463.00 to \$139.00. The proper apportionment of the severance pay under the requirements of the law did not impact the benefit weeks subsequent to the week that ended October 10, 2015. In other words, the claimant did not receive severance pay that was deductible for the week ending October 17, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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