

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CONNIE B BEVER
Claimant

APPEAL 14A-UI-11226-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMPERAGE
Employer

**OC: 09/07/14
Claimant: Appellant (4)**

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2014 (reference 04) decision that deducted severance pay from benefits. After due notice was issued, a telephone conference hearing was held on November 18, 2014. Claimant participated. Employer participated through co-director of finance and operations Kathy Schreiner.

ISSUE:

Did the claimant receive 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 September 3, 2014 and did receive severance pay. There was no requirement that she sign an agreement waiving certain rights to receive the pay. The claimant agrees with the employer designation of the end date of severance payments as Saturday, November 1, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was incorrectly 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. 871-24.13(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 severance pay calculation by IWD was inaccurate and the amount was incorrectly deducted. The parties agree it ended November 1, 2014.

DECISION:

The October 27, 2014 (reference 04) decision is modified in favor of the appellant. The severance pay was incorrectly deducted. Benefits are allowed effective November 2, 2014. The claimant will be required to begin filing a weekly voice response unit (VRU) claim the week ending November 22, 2014.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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