

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERRY R JAMISON
Claimant

KWF LLC
Employer

APPEAL 17A-UI-11785-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/03/17
Claimant: Appellant (2)

Iowa Code § 96.5(5)c – Receipt of Pension

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 8, 2017, (reference 05) decision that deducted severance pay from benefits for the week-ending October 14, 2017. After due notice was issued, a telephone conference hearing was held on December 7, 2017. Claimant participated. Employer participated through shop manager Brett Johnson.

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: Claimant was employed through October 9, 2017. Both parties agree that he did not receive severance pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not receive severance pay.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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 Unemployment Insurance Handbook at page 21 provides:

FULLY DEDUCTIBLE FROM THE BENEFIT PAYMENT

Each dollar the individual earns reduces their benefit payment by one dollar (dollar-for-dollar).

- Vacation pay and paid time off
- Severance pay
- Pension, retirement, annuity, or any other similar period payment
- Workers' Compensation (temporary total disability)
- Paid excused leave (funeral or personal leave)

Example: An individual's WBA is \$400 and they receive a \$370 vacation payout for the week they are claiming.

- $\$400 - \$370 = \$30$. \$30 is the payment amount for the week

The severance pay calculation was inaccurate and the amount was incorrectly deducted as the claimant did not receive severance pay.

DECISION:

The November 8, 2017, (reference 05) unemployment insurance decision is reversed. There was no severance payment and the amount was incorrectly deducted.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs