

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CATHY D RINARD
Claimant

MB ENTERPRISES OF AMES LC
Employer

APPEAL 15A-UI-11735-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Appellant (1)

Iowa Code § 96.5(5) – Severance Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 20, 2015, (reference 02) unemployment insurance decision that deducted severance pay from her unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 4, 2015. Claimant participated. Employer participated through Valerie Miller, Controller.

ISSUE:

Was the severance pay deducted for the correct period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated on September 3, 2015 and thereafter was paid for accrued vacation time and was paid for severance pay. When filling out their notice of protest on the online SIDES system, the employer did not designate the time period to which the claimant's accrued vacation pay was to apply. The claimant was paid for 46 hours of accrued vacation time at the rate of \$16.00 per hour.

Additionally the claimant was paid for four weeks of severance pay or 160 hours also at the rate of pay of \$16.00 per hour. She was paid a gross total of \$2560.00 in severance pay for the four weeks after her separation. The claimant was not required to sign any type of a release in order to obtain the severance pay.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was correctly 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. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

The claimant received four weeks of severance pay that represents wage replacement all of which are deductible from her unemployment insurance benefits as she was not required to sign any type of release to obtain the severance pay. Therefore, the entire amount of severance pay was correctly deducted for the four-week period ending October 10, 2015 after she was paid accumulated vacation pay.

DECISION:

The October 20, 2015, reference 02, decision is affirmed. Thy entire amount of severance pay was correctly deducted for the four-week period ending October 10, 2015.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs