

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL I DARE
Claimant

APPEAL NO. 09A-UI-11391-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 03/22/09
Claimant: Appellant (1)

Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant, Daniel Dare, filed an appeal from a decision dated August 7, 2009, reference 03. The decision disqualified him from receiving unemployment benefits for the one-week period ending May 2, 2009, due to the receipt of severance pay and found him overpaid \$400.00. After due notice was issued a hearing was held by telephone conference call on August 25, 2009. The claimant participated on his own behalf. The employer, Qwest, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the severance pay was deducted for the correct period.

FINDINGS OF FACT:

The claimant was separated on September 25, 2008, and received 14 hours of vacation pay. He also received severance pay in the amount of \$42,453.90 based upon a rate of pay at \$34.55 per hour. The employer did designate the period of time to which the severance pay was to be applied as bi-weekly payments of \$2,764.00 up to \$42,453.90.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for correct period.

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 claimant received 30.7 weeks of severance pay. Therefore, the entire amount of severance pay was correctly deducted for the week ending May 2, 2009.

DECISION:

The representative's decision of August 7, 2009, reference 03, is affirmed. Daniel Dare is ineligible for benefits for the week ending May 2, 2009, due to the receipt of severance pay.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs