

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL S O'BRIEN
Claimant

APPEAL NO. 09A-UI-07923-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAUL TRANSPORTATION INC
Employer

OC: 02/08/09
Claimant: Appellant (4)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 26, 2009, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 17, 2009. Claimant participated. Employer participated through Brenda Rogers, Director of Human Resources. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant received severance pay at separation, if that amount is deductible from benefits, and if so, for what period.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was separated on February 10, 2009. He received gross vacation pay of \$2,961.53 based upon a weekly rate of pay of \$1,346.15. The vacation pay was equivalent to 88 hours based upon a 40-hour week. In exchange for severance pay, employer forgave a \$12,500.00 personal loan. Had severance pay been issued, it would have been limited to one week for every week of service, or three weeks' pay based upon the 2006 hire date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was incorrectly deducted.

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.

871 IAC 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.

Since employer intended to pay claimant only three weeks' severance pay regardless of the additional loan forgiveness, any deduction from benefits after the week ending March 14, 2009 was incorrect. Therefore, the severance pay was correctly deducted for the three-week period ending March 14, 2009 but was incorrectly deducted for the seven-week period ending May 2, 2009.

DECISION:

The May 26, 2009, reference 02, decision is modified in favor of the appellant. The severance pay was not deducted for the correct period and is deductible only for the three-week period ending March 14, 2009.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css