

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN SCHWEERS

Claimant

APPEAL NO. 08A-UI-10173-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FLAGG, GEORGE FLAGG, JEFF
FLAGG SERVICE ORGANIZATION**

Employer

**OC: 08/17/08 R: 02
Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Ryan Schweers filed a timely appeal from the October 22, 2008, reference 02 decision that denied benefits for the week ending August 30, 2008 due to his alleged receipt of severance pay. After due notice was issued, a hearing was held on November 17, 2008. The hearing in this matter was consolidated with the hearing in Appeal Numbers 08A-UI-10174-JTT and 08A-UI-10175-JTT. Mr. Schweers participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing. The employer was aware of the hearing and, in lieu of participating, submitted a “breakdown of wages due” to the claimant at the time of dismissal, which document was received into evidence as Exhibit One. The administrative law judge took official notice of the administrative file documents associated with the October 22, 2008, reference 03 decision and the October 22, 2008, reference 02 decision. The administrative law judge took official notice of the Agency’s administrative record of wages reported by or for the claimant and unemployment insurance benefits disbursed to the claimant.

ISSUES:

Whether the claimant received severance pay that was deductible from unemployment insurance benefits.

Whether the employer made a timely designation of the period to which severance pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which accrued severance pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ryan Schweers was employed by Flagg Service Organization as a full-time accountant from October 2007 until August 20, 2008, when the employer laid him off. Mr. Schweers’ wage at the time of separation was \$16.25 per hour. At the time of the separation, Mr. Schweers had 73.3 hours of vacation pay benefits that he had accrued, but not yet used. The dollar value of the

vacation pay was \$1,191.13. At the time of the separation, the employer owed Mr. Schweers for the 25 hours he had worked during the period of August 18-20. The dollar value of the wages for the week ending August 23, 2008 was \$406.25. At the time of the separation, the employer calculated that it owed Mr. Schweers 37.7 hours in back wages. The dollar value of the back wages was \$612.63.

Mr. Schweers did not have a severance pay arrangement with the employer and did not receive severance pay from the employer.

Mr. Schweers established a claim for unemployment insurance benefits that was deemed effective August 17, 2008. Workforce Development calculated Mr. Schweers' week unemployment insurance benefit amount to be \$361.00. For the week that ended August 23, 2008, Mr. Schweers reported wages and/or vacation benefits of \$999.00. Because this amount exceeded Mr. Schweers' weekly unemployment insurance benefit amount, Mr. Schweers' unemployment insurance eligibility was reduced to zero for the week ending August 23, 2008.

On August 25, 2008, Workforce Development mailed a notice of claim concerning Mr. Schweers to the employer. The notice of claim provided a September 4, 2008 deadline for the employer's response. On September 2, 2008, accountant Jannell Pappas completed the employer's information on the notice of claim form. Workforce Development received the employer's faxed response on September 2, 2008. The employer did not protest Mr. Schweers' claim for benefits. In the space provided for information regarding vacation pay, the employer wrote "See attached." The form indicated on its face that, "Failure to enter the dates to which vacation pay applies shall result in the entire vacation pay amount being applied to the five working days following the last day worked." In the space provided for information regarding severance pay, the employer wrote "See attached." The document the employer attached to the notice of claim did not satisfy the request for information on the notice of claim form. The document the employer attached was silent on the dates to which wages, vacation pay or other pay were to be applied. The attached document indicated that the on September 5, 2008, the employer had paid Mr. Schweers wages for 62.7 hours of work and vacation pay equivalent to 17.3 hours of work. The document indicated that the total amount paid on September 5, 2008 was \$1,300.00. The attached document indicated that on September 20, 2008, the employer paid Mr. Schweers vacation pay equivalent to 56 hours of work, \$910.00.

A Workforce Development representative erroneously treated the information provided by the employer as if the employer had provided dates to which wages, vacation pay or other pay were to be applied. Based on erroneous information provided by the employer on the notice of claim form, the Workforce Development representative erroneously concluded that Mr. Schweers had received severance pay.

REASONING AND CONCLUSIONS OF LAW:

An individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits which would otherwise be due, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

The weight of the evidence in the record establishes that Mr. Schweers did not receive severance pay or the equivalent. Accordingly, there was not severance pay to be deducted

from unemployment insurance benefits. Mr. Schweers was eligible for benefits for the week ending August 30, 2008, provided he was otherwise eligible.

However, Mr. Schweers received vacation pay for the week ending August 30, 2008 that exceeded his weekly benefit amounts, and which reduced his benefit eligibility for that week to zero. See Appeal Number 08A-UI-10174-JTT.

DECISION:

The Workforce Development representative's October 22, 2008, reference 02, decision is reversed. The claimant did not receive severance pay. The claimant was eligible for benefits for the week that ended August 30, 2008, provided he was otherwise eligible.

The decision in this case should be considered in connection with the decisions in Appeal Numbers 08A-UI-10174-JTT and 08A-UI-10175-JTT. The claimant received vacation pay for the week ending August 30, 2008 that exceeded his weekly benefit amounts, and which reduced his benefit eligibility for that week to zero. See Appeal Number 08A-UI-10174-JTT.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs