

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT M KOCH**  
Claimant

**APPEAL NO: 09A-UI-14535-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PS ESERVE CORP**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

Robert M. Koch (claimant) appealed a representative's September 15, 2009 decision (reference 01) that concluded he was not eligible to receive benefits for the weeks ending April 11 through May 16, 2009, because he received severance pay from PS Eserve Corp (employer) for these weeks. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 26, 2009. The claimant participated in the hearing. Katy Clark, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant receive a severance payment that should be deducted from his weekly benefits, or did he receive a settlement payment that is not deductible?

**FINDINGS OF FACT:**

The claimant's last day of work for the employer was March 19, 2009. He worked full-time and earned a yearly salary of \$48,000.00. Before the claimant could receive four weeks of severance pay and four weeks of pay in lieu of notice, the employer required him to sign a Severance Agreement. If the claimant did not sign the Severance Agreement, he would still receive any accrued vacation pay, but not the additional eight weeks of pay. The claimant signed the agreement within the allotted time. The employer paid him a gross lump sum payment of \$7,384.64 which amounted to four weeks of severance pay and four weeks of pay in lieu of notice.

**REASONING AND CONCLUSIONS OF LAW:**

Severance pay must be deducted from a claimant's maximum weekly benefit amount. Iowa Code section 96.5-5. A payment after a separation that is conditioned upon execution of a release or waiver of claims is not "severance pay" as contemplated by Iowa Code section 96.5-5. It is more aptly characterized as consideration given by the employer to the claimant for

waiver of possible causes of action against the employer and not simply a payment for prior years of service to the employer. The facts establish the claimant received \$7,384.64 in exchange for the claimant's signing the release. Therefore, the eight additional weeks of payment the claimant received cannot be considered severance pay or pay in lieu of notice that is deductible from the claimant's unemployment insurance benefits. This means the claimant is eligible to receive benefits as of April 5, 2009. None of \$7,384.64 will be deducted from any of the claimant's weekly benefits. This means the claimant is eligible to receive benefits for the weeks ending April 11 through May 16, 2009.

**DECISION:**

The representative's September 15, 2009 decision (reference 01) is reversed. The eight additional weeks of pay the claimant received is settlement pay, not severance pay. Settlement pay is not deducted from a claimant's weekly benefit amount. Therefore, the claimant is eligible to receive benefits as April 5 through May 16, 2009, and no deductions shall be made during these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs