

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-02839-SWT
OC: 02/05/06 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-5 - Severance Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 3, 2006, reference 01, that concluded he was ineligible to receive unemployment insurance benefits for the 19 weeks ending June 17, 2006, due to the receipt of severance pay. A telephone hearing was held on March 29, 2006. The claimant participated in the hearing with his representative, Steve Garner. Clancy Arendt participated in the hearing on behalf of the employer. Exhibits A-1, 1, and 2 were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from January 4, 1993, through January 9, 2006. After the claimant's separation from employment, the claimant and employer negotiated and entered into a separation and release agreement, which was signed by the claimant on January 24 and

by the employer on February 3, 2006. Under the terms of the agreement, the employer agreed to pay the claimant a lump-sum payment of \$25,000.00 as consideration for the claimant releasing any legal claims that he might have against the employer.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 5, 2006. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer reported the claimant had received separation pay and designated the period from February 6 through June 16, 2006, as the period to which the separation pay was to apply.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received severance pay deductible from his unemployment insurance benefits.

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay attributable to the same week. Iowa Code Section 96.5-5-a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1).

“Severance pay” is set forth in the statute and rules regarding deductible payments but The statute and rules provide that severance pay is deductible from unemployment insurance benefits but do not define the term. The dictionary definition of “severance pay” is “an allowance usually based on length of service that is payable to an employee on termination of employment.” Merriam-Webster’s Collegiate Dictionary, 1073 (10th Ed. 1993).

The payment is not deductible severance pay because the agreement states that the payment is consideration for the release of liability signed by the claimant of all legal claims against the employer. The payment was contingent on the claimant signing a release of liability and would have been paid without the release being signed.

DECISION:

The unemployment insurance decision dated March 3, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible, as he received no deductible payments.

saw/tjc