

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D MOHR
Claimant

APPEAL NO. 09A-UI-11372-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ING USA ANNUITY AND LIFE INSURANCE
COMPANY**
Employer

OC: 02-22-09
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 31, 2009 reference 01, decision that deducted severance pay from his unemployment insurance benefits. After due notice was issued, the administrative law judge determined that a hearing was not necessary. Claimant's Exhibit A was received.

ISSUE:

Was the severance pay deducted for the correct period?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was laid off due to lack of work on January 31, 2009. The claimant agreed to sign a release or waiver in order to receive payment of \$7,395.78. The claimant would not have received the payment unless he signed the waiver and release.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was incorrectly deducted from the claimant's unemployment insurance benefits.

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.

A payment after separation which is conditioned upon execution of a release or waiver of claims is not "severance pay" as contemplated by the statute. 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 payment for prior years of service to the employer. Claimant's Exhibit A makes clear that the severance payment was in exchange for the claimant's signing of the release, thus it cannot be considered severance pay that is deductible from the claimant's unemployment insurance benefits. None of the \$7,395.78 should have been deducted from the claimant's unemployment insurance benefits.

DECISION:

The July 31, 2009, reference 01, decision is reversed. The severance pay was incorrectly deducted from the claimant's unemployment insurance benefits.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs