

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELEN J NICHOLSON

Claimant

APPEAL NO. 09A-UI-07582-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C R AREA CHAMBER OF COMMERCE

Employer

OC: 01/25/09

Claimant: Appellant (2)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

An appeal was filed on behalf of Helen J. Nicholson, from an unemployment insurance decision dated May 1, 2009, reference 02, that denied benefits to her for the three weeks ending February 14, 2009, upon a finding that she had received severance pay for the weeks in question. After due notice was issued, a telephone hearing was held June 4, 2009 with Ms. Nicholson participating. Human Resources Vice President, Julie Stow, participated for the employer, Cedar Rapids Area Chamber of Commerce. Exhibit One was admitted into evidence.

ISSUE:

Did the claimant receive deductible severance pay?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Helen J. Nicholson's employment with the Cedar Rapids Area Chamber of Commerce ended on January 16, 2009. In connection with her separation from employment, she received a payment of \$2,799.08 characterized by the employer as severance pay. In order to receive this amount, however, Ms. Nicholson was required to waive any legal actions against the employer in connection with her separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the payment received by Ms. Nicholson is deductible severance pay. It is not.

Iowa Code section 96.5-5 requires that certain payments be deducted from unemployment insurance benefits. Severance pay, traditionally a gift to a departing employee from an employer, is deductible from unemployment insurance benefits. The Iowa Administrative Code makes a specific exception in instances in which the employee promises to stay with the

employer until a particular date. Such payments, known as stay pay, are not deductible for unemployment insurance purposes.

The administrative law judge concludes that the payment received by Ms. Nicholson is substantially similar to stay pay. Ms. Nicholson made a binding contractual agreement to refrain from bringing any legal action against the employer in connection with her separation from employment. The administrative law judge reasons that this payment is consideration for the promise and is not traditional severance pay as contemplated by the statute. Under the circumstances, the payment is not deductible.

DECISION:

The unemployment insurance decision dated May 1, 2009, reference 02, is reversed. The claimant did not receive deductible severance pay in connection with her separation from employment. She is entitled to receive unemployment insurance benefits for the three weeks ending February 14, 2009.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

srs/pjs