

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

TERESA A SADE
440 – 8th ST
MARION IA 52302

MIDLAND ESCROW SERVICES INC
ATTN LESLIE BLECKEN
3501 WESTOWN PKWY
WEST DES MOINES IA 50266

Appeal Number: 05A-UI-12134-JTT
OC: 11/13/05 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)(b) – Severance Pay, Separation Allowance or Dismissal Pay

STATEMENT OF THE CASE:

Claimant Teresa Sade filed a timely appeal from the November 29, 2005, reference 01, decision that denied benefits for the five weeks ending December 17, 2005, based on pay she received in the form of severance pay. After due notice was issued, a hearing was held on December 15, 2005. Ms. Sade participated. The employer participated through Human Resources Generalist Leslie Blecken. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Sade was employed by Iowa Realty as a full-time title closing processor until October 21, 2005, when the employer laid her off. Ms. Sade and the employer entered into an agreement

whereby Ms. Sade received severance pay. On November 17, the employer submitted a timely response to the Notice of Claim. In the employer's response, the employer indicated the severance pay was for the period of November 15, 2005 through December 15, 2005. This information was inaccurate. The severance pay was actually for the period of October 24 through December 2, 2005, but was disbursed to Ms. Sade on November 15, November 30, and December 15. The severance pay during the period in question was \$465.00 per week. At the time Ms. Sade established her claim for benefits, her weekly benefit amount was established at \$349.00.

REASONING AND CONCLUSIONS AT LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Workforce Development has accurately deducted Ms. Sade's severance pay in determining her eligibility for benefits.

Iowa Code section 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.

The evidence in the record establishes that, based on information the employer provided in its protest, the agency erroneously applied the severance pay to the period of November 15, 2005 through December 15, 2005. At the time of the hearing, the employer clarified that it has erroneously provided dates upon which checks were disbursed rather than the pay period covered by the severance pay. The pay period covered by the severance pay was October 24 through December 2. Accordingly, the severance pay should not have been applied to the benefit weeks that ended December 10 and 17, and Ms. Sade is eligible for benefits during those two weeks, provided she is otherwise eligible.

DECISION:

The Agency representative's November 29, 2005, reference 01, decision is reversed. The claimant's severance pay should not have been applied to the benefit weeks that ended December 10 and 17. The claimant is eligible for benefits for those weeks, provided she is otherwise eligible. The claimant's severance pay was correctly applied through the benefit week ending December 3, 2005 and the claimant is disqualified for benefits through the benefit week that ended December 3, 2005.

JT/kjf