

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINE K FRIESTAD**  
Claimant

**APPEAL NO. 15A-UI-06384-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R & R INVESTORS INC**  
Employer

**OC: 04/26/15**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Kristine Friestad filed a timely appeal from the May 28, 2015, reference 02, decision that denied benefits for the two-week period of April 26, 2015 through May 9, 2015, based on an Agency conclusion that she had received severance pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on July 14, 2015. Ms. Friestad participated. Jennifer Fegter represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-06385-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, A and B and Department Exhibits D-1 and D-2 into evidence.

**ISSUE:**

Whether the claimant received severance pay that is deductible from the claimant's unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristine Friestad was employed by R & R Investors, Inc., as a full-time staff accountant until she separated from the employer on Friday April 24, 2015. Ms. Friestad last performed work for the employer on that date. Ms. Friestad had performed 40 hours of work for the employer during the final week of employment, for which the employer paid her \$1,111.11 in wages. At the time Ms. Friestad separated from the employment, she had accrued but not yet used four hours of PTO. The value of the PTO was \$111.11. The employer paid that amount to Ms. Friestad.

At the time Ms. Friestad separated from the employment, the employer agreed to provide Ms. Friestad with an additional two weeks' wages, \$2,222.22, in exchange for Ms. Friestad's signature on a Severance Agreement and General Release. Ms. Friestad would not have received the \$2,222.22 in additional payment if she had not signed the agreement. Pursuant to

the agreement, Ms. Friestad agreed to release the employer from any and all liability in connection with her separation from the employment. The employer paid the \$2,222.22 to Ms. Friestad.

Ms. Friestad established a claim for unemployment insurance benefits that was effective April 26, 2015 and received benefits. The benefits that Ms. Friestad received included \$448.00 for the week that ended May 2, 2015, and the same amount for the weeks that ended May 9, 2015 and May 16, 2015.

On April 30, 2015, Workforce Development mailed a notice of claim to the employer. The notice of claim contained a May 11, 2015 deadline for the employer's response. Workforce Development received the employer's faxed response on May 7, 2015. In the response, the employer indicated that it was not protesting the claim for benefits. The employer provided information concerning the final work day, the final wages and the vacation/PTO payout. The employer designated April 27-28, 2015 as the period to which the four hours of vacation/PTO should be applied. The employer referenced the two weeks of "severance pay" or the equivalent in the amount of \$2,222.22.

After Workforce Development received the employer's timely response to the notice of claim, a claims deputy redetermined Ms. Friestad's benefit eligibility and concluded that Ms. Friestad was not eligible for benefits for the weeks ending May 2 and 9, 2015. The Benefits Bureau subsequently concluded that it had erred in deducting the "severance" amount from the claim. On June 5, 2015, the Benefits Bureau mailed a reference 04, decision to Ms. Friestad in which the Benefits Bureau acknowledged its error. However, the Benefits Bureau did not provide a copy of the reference 04, decision to the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

Iowa Admin. Code r. 871-24.13(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.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a lay off. The Appeals Section has historically excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. The evidence in the record indicates that the settlement amount at issue in this case arose out an attempt by the employer to resolve legal matters, or potential legal matters, between itself and Ms. Friestad. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to Ms. Friestad falls outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from her Unemployment Insurance Benefits under Iowa Code Section 96.5(5). The \$2,222.22 that the employer paid to Ms. Friestad in exchange for her signature on the Severance Agreement and General Release was not deductible from Ms. Friestad's unemployment insurance benefits.

**DECISION:**

The claims deputy's May 28, 2015, reference 02, decision is reversed. The claimant did not receive severance pay or the equivalent that was deductible from her unemployment insurance benefits. The claimant instead received a legal settlement that was not deductible from her unemployment insurance benefits. The claimant is eligible for benefits for the two-week period of April 26, 2015 through May 9, 2015, provided she is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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