

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

SHERRI L MINEART
1215 PLEASANT PLAIN
BRIGHTON IA 52540

CITY OF FAIRFIELD
ATTN FINANCE OFFICE
PO BOX 850
FAIRFIELD IA 52556

Appeal Number: 04A-UI-00066-HT
OC: 12/14/03 R: 03
Claimant: Appellant (1)

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, Sherri Mineart, filed an appeal from a decision dated January 2, 2004, reference 02. The decision disqualified her from receiving unemployment benefits for the two-week period ending December 27, 2003, due to receiving severance pay. After due notice was issued a hearing was held by telephone conference call on January 29, 2004. The claimant participated on her own behalf. The employer, City of Fairfield, participated by City Clerk Joy Messer and City Administrator John Brown.

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: Sherri Mineart was employed by City of Fairfield from July 24, 2002 until December 1, 2003. She was a full-time assistant planning and zoning administrator earning \$10.42 per hour.

The claimant's last day of work was December 1, 2003. She was given ten days of vacation pay and ten days of severance pay beginning with Tuesday, December 2, 2003. The employer noted the amounts and the dates on its response to the notice of claim submitted on December 18, 2003. Ms. Mineart filed a claim for unemployment benefits with an effective date of December 14, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

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 paragraphs "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.

The claimant did receive vacation pay, which she exhausted prior to filing her claim for benefits. However, she had two weeks of severance pay which she did not exhaust until the week ending December 27, 2003. She is disqualified for benefits for that two-week period under the provisions of the above Code section.

DECISION:

The representative's decision of January 2, 2004, reference 02, is affirmed. Sherri Mineart is disqualified for the two-week period ending December 27, 2003, due to the receipt of severance pay.

bgh/kjf