

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER L SCHUSTER**  
Claimant

**APPEAL NO. 16A-UI-06348-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLATINUM SERVICES**  
Employer

**OC: 04/17/16**  
**Claimant: Appellant (4)**

Section 96.5-5 – Severance Pay  
Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Heather Schuster (claimant) appealed a representative's May 19, 2016 (reference 03) decision that concluded she was not eligible to receive unemployment insurance benefits for the two week period ending April 30, 2016, due to the receipt of severance pay from Platinum Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 23, 2016. The claimant participated personally. The employer participated by Angie Gravel, Human Resource Manager. Department's Exhibit D-1 was admitted to the record.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant received severance pay and, therefore, is not eligible to receive unemployment insurance benefits for the two-week period ending April 30, 2016.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from March 30, 2015 until March 31, 2016, as a full-time lead recruiting coordinator. She earned \$480.00 per week. When the claimant's employment ended the employer gave the claimant three-weeks of severance pay or \$1,440.00. The employer issued the claimant vacation pay and designated April 1, 2016, through April 1, 2016, as the allocation date. The claimant filed her claim for unemployment insurance benefits with an effective date of April 17, 2016.

A disqualification decision was mailed to the claimant's last known address of record on May 19, 2016. She did receive the decision within ten days at her address of record but the claimant was away from home until June 1, 2016. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 30, 2016. The appeal was not filed until June 2, 2016, which is after the date noticed on the disqualification decision.

## REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the decision as soon as she received it. Therefore, the appeal shall be accepted as timely.

For the following reasons the administrative law judge concludes the claimant received severance pay and is not eligible to receive unemployment insurance benefits for the one-week period ending April 23, 2016.

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.

The claimant received vacation pay that was allocated for the week ending April 2, 2016. Her three weeks of severance pay ran from April 9, 2016, to April 23, 2016. The claimant did not file for unemployment insurance benefits until April 17, 2016. The claimant received severance pay for the one-week ending April 23, 2016, while receiving unemployment insurance benefits. Under the provisions of the above Code section, the claimant is disqualified from receiving unemployment insurance benefits for the one-week period ending April 23, 2016, due to the receipt of the severance pay.

**DECISION:**

The May 19, 2016 (reference 03) decision is modified in favor of the appellant. The appeal in this case was timely. The claimant is disqualified from receive unemployment insurance benefits for the one-week period ending April 23, 2016, due to the receipt of severance pay.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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