

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A HEITSMAN
Claimant

APPEAL NO. 08A-UI-03735-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IES COMMERCIAL INC
Employer

OC: 03/16/08 R: 03
Claimant: Appellant (2)

Section 96.5-5 - Severance Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 9, 2008, reference 03, that concluded she was ineligible for benefits for the three weeks ending April 12, 2008, due to the receipt of severance pay. A telephone hearing was held on May 6, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Mark Gerving participated in the hearing on behalf of the employer with a witness, Tammy Reese. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible severance pay and was it deducted correctly?

FINDINGS OF FACT:

The claimant worked for the employer from November 6, 2006, through March 21, 2008. Her rate of pay was \$15.00 per hour. At the time of her separation from employment, the employer offered her a severance package, which included \$2,460.00 in severance pay contingent on her signing a release and waiver of all claims. The claimant had until May 5, 2008, to sign the agreement to receive the severance pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 16, 2008. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer explained that the \$2,460.00 in severance pay was based on the claimant returning an agreement by May 5, 2008, but that the agreement had not been returned yet. The employer did not designate the dates the severance pay applied to.

The claimant signed the agreement containing the release and waiver of all claims on April 15, 2008, but as of the time of the hearing had not received any severance pay. The claimant considers the \$2,460.00 as consideration for her releasing all claims against the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received severance pay deductible from her unemployment insurance benefits.

Under the unemployment insurance law, a person is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay attributable to the same week. Iowa Code section 96.5-5-a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1).

"Severance pay" is set forth in the statute and the rules regarding deductible payments, but the law provides no legal definition of the term. The dictionary definition of "severance pay" is "an allowance usually based on length of service that is payable to an employee on termination of employment." Merriam-Webster's Collegiate Dictionary 1073 (10th ed. 1993).

In this case, the payment amounts to consideration for the release signed by the claimant of all legal claims against the employer. The payment was contingent on the claimant signing a release of liability and would have been paid without the release being signed. This is not deductible severance pay.

DECISION:

The unemployment insurance decision dated April 9, 2008, reference 03, is reversed. The claimant is eligible to receive benefits for the three weeks ending April 12, 2008.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw