

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEBORAH A PERDUE**

Claimant

**APPEAL 17A-UI-08867-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – IOWA INC**

Employer

**OC: 07/30/17**

**Claimant: Respondent (1R)**

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Iowa Code § 96.5(5) – Severance Pay  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 24, 2017, (reference 03) decision that did not deduct separation pay from benefits. After due notice was issued, a telephone conference hearing was held on September 18, 2017. Claimant participated. Employer participated through account manager Mike Thomas. Claimant's Exhibit A was received. Employer's Exhibit 1 was received. The administrative law judge takes official notice of the unemployment insurance decision reference 03.

**ISSUES:**

Is the appeal timely?

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The issue of whether the appellant's appeal is timely is moot as the Agency did not provide either party with notice of appeal rights or a deadline by which to file an timely appeal. (unemployment insurance decision reference 03)

The claimant was separated on May 4, 2017, and did receive separation pay in the amount of \$19,930.35, in consideration of waving certain rights, including a release of liability from any claims or causes of action. (Claimant's Exhibit A) Severance pay is generally defined as money paid to an employee who is dismissed because of a lack of work or other reasons beyond the employee's control but does not require anything further in exchange.

**REASONING AND CONCLUSIONS OF LAW:**

The Fifth and Fourteenth Amendments to the United States Consitution and the Constitution of the State of Iowa require due process to balance the power of law and the protection of an individual or entity from it. Notice of proceedings and the right to appeal are essential hallmarks of due process in the judicial and administrative contested case adjudicatory process. The

Agency did not provide due process notice to the parties in this case by not providing the employer notice of appeal rights from the decision favorable to the claimant. Thus, the timeliness of the employer's appeal is moot.

For the reasons that follow, the administrative law judge concludes claimant did not receive severance pay.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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. 871-24.13(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 Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience

money” to help a former employee survive a lay off. It has traditionally 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 greater weight of 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 it and the claimant. Under the Agency’s historic interpretation of “severance pay,” the settlement amount issued to the claimant would fall outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code section 96.5(5).

Since claimant was expected to agree to the terms of the Separation Agreement and General Release, the payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant, but was for a contractual obligation to waive enumerated rights, payment in consideration of that obligation is not considered wages. Therefore, the agreement consideration should not be deducted from benefits and decision not to deduct “severance” pay was correctly determined.

**DECISION:**

The August 24, 2017, (reference 03) unemployment insurance decision is reversed. The claimant did not receive severance pay and the contract consideration was correctly defined and not deducted.

**REMAND:** The Benefits Bureau of Iowa Workforce Development shall rewrite this and any other ANDS decision that does not contain notice of appeal rights, to include a clear statement of appeal rights together with an appeal deadline. Any decisions sent to parties without such a statement of appeal rights shall be amended and reissued.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs