

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ASHLEY WILSON**  
Claimant

**APPEAL 20A-UI-00735-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 12/15/19  
Claimant: Appellant (1R)**

Iowa Code § 96.5(5) – Severance Pay  
Iowa Admin. Code r. 871—24.13(1)- Deductible and Non-deductible Payments  
Iowa Admin. Code r. 871-24.13(3)c – Severance Pay

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 16, 2020 (reference 06) unemployment insurance decision that found claimant was only eligible for a reduced benefit amount for the week of January 12, 2020 through January 18, 2020 because she was entitled to receive severance pay, which was deductible from her benefit amount. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2020. The claimant, Ashley Wilson, participated personally. The employer, Hillcrest Family Services, participated through witness Daniel Nettie. This case was consolidated for hearing with Appeal 20A-UI-00734-DB-T. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUE:**

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: Claimant was employed for this employer from August 12, 2019 until December 20, 2019. She earned an annual salary of \$87,000.00. She is permanently separated from employment at this time.

Claimant filed a claim for unemployment insurance benefits with an effective date of December 15, 2019. Her weekly benefit amount is \$518.00. Claimant's base period consists of four quarters that include the third quarter of 2018 through the second quarter of 2019. Wages reported in each of those four quarters are as follows:

	2018/3	2018/4	2019/1	2019/2
St Luke's/Jones Regional	\$10,743	\$13,478	\$12,020	\$13,463

The highest wages reported in her base period is the fourth quarter of 2018, which shows that she was paid \$13,478.00 during that quarter. Her average weekly wage from that quarter is therefore \$1,036.77 (\$13,478.00 divided by 13 weeks).

After separating from employment on December 20, 2019, claimant earned severance pay of \$3,346.00. She was not required to sign any waiver or agreement in order to receive severance pay.

Claimant is currently labeled in Group Code "3", temporary layoff for unemployment insurance benefits purposes. Her separation from employment is not temporary. The matter of whether the claimant is properly listed in Group Code "3" and whether she is required to make employer contacts shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

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.

(emphasis added).

Iowa Admin. Code r. 871—24.13(1) provides:

Deductible and nondeductible payments.

(1) Procedures for deducting payments from benefits. Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures **until the amount is exhausted**; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim response, the amount of the payment and the period to which the amount applies. **If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative shall determine days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period.** The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a **dollar-for-dollar basis**.

(emphasis added).

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.

(emphasis added).

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. Because there was no agreement required wherein the claimant relinquished her right to file any further grievances between the parties regarding her severance pay, it is deductible on a dollar-for-dollar basis from her Unemployment Insurance Benefits under Iowa Code section 96.5(5).

The claimant earned severance pay of \$3,346.00 when she separated from employment. Her severance pay is deductible from her unemployment insurance benefits on a dollar-for-dollar basis pursuant to Iowa Admin. Code r. 871-24.13(3)c because she was not required to sign a severance agreement. Pursuant to Iowa Admin. Code r. 871—24.13(1), the unemployment insurance representative shall determine days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. Claimant's average weekly wage from her high quarter is \$1,036.77. Claimant's amount of severance pay of \$3,346.00 equals 3.23 weeks in which severance pay is applied, ((\$3,346.00 divided by \$1,036.77),(rounded up to \$1,037)). Because \$1,037.00 is above and beyond her weekly-benefit amount of \$518.00 for each of the three weeks beginning December 22, 2019 and ending January 11, 2020, the claimant is not entitled to any unemployment insurance benefits payment for those three weeks.

As such, benefit week of December 22, 2019 through December 28, 2019 had \$1,037.00 in severance pay applied to this week, which was above the weekly-benefit amount of \$518.00. Benefit week of December 29, 2019 through January 4, 2020 had \$1,037.00 in severance pay applied to this week, which was above the weekly-benefit amount of \$518.00. Benefit week of January 5, 2020 through January 11, 2020 had \$1,037.00 in severance pay applied to this week, which was above the weekly-benefit amount of \$518.00. The remaining \$235.00 in severance pay shall be deducted from the benefit week beginning January 12, 2020 and ending January 18, 2020. Claimant's weekly benefit amount of \$518.00 less her remaining severance pay of \$235.00 means that she is entitled to a reduced benefit amount of \$283.00 for the benefit week-ending January 18, 2020.

**DECISION:**

The January 16, 2020 (reference 06) unemployment insurance decision is affirmed. The claimant is eligible for a reduced benefit amount for the week beginning January 12, 2020 and ending January 18, 2020 due to the receipt of severance pay.

**REMAND:**

The issue of whether the claimant is properly included in Group Code "3" as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs