

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA L MCDONALD
Claimant

APPEAL NO. 12A-UI-13691-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCGRAW-HILL INC
Employer

OC: 05/22/11
Claimant: Appellant (2)

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Sara McDonald filed a timely appeal from the November 7, 2012, reference 02, decision that denied benefits for the seven weeks ending April 14, 2012 based on an agency conclusion that she had received severance pay for those weeks that exceeded her weekly benefit amount. After due notice was issued, a hearing was held on December 20, 2012. Ms. McDonald participated. The employer waived participation in the hearing. The hearing in this matter was consolidated with the hearing in Appeal Numbers 12A-UI-13690-JTT and 12A-UI-13692-JTT. Exhibit A and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO) of benefits disbursed to the claimant.

ISSUES:

Whether the claimant received severance pay that is deductible from her unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any severance pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any severance pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sara McDonald was employed by McGraw-Hill, Inc., as a full-time account coordinator and last performed work for the employer on December 6, 2011. At that point, the employer notified Ms. McDonald that she was laid off. The employer notified Ms. McDonald that in keeping with the employer's written severance policy, the employer would continue to pay Ms. McDonald her regular wage for an additional 6.99 weeks, with the severance period to end on February 6, 2012. The monetary value of the "standard severance" pay was \$4,060.77. Ms. McDonald did not have to sign away any rights in order to receive the "standard severance" pay. The

employer followed through with paying the “standard severance” pay amount through bi-weekly payments that corresponded to the employer’s bi-weekly pay periods.

Ms. McDonald’s final wage was \$14.53 per hour. As of February 6, 2012, Ms. McDonald had accrued but not yet used 120 hours of vacation pay benefit. The gross monetary value of the accrued but unused vacation pay was \$1,743.60 (120 hours x \$14.53 = \$1,743.60). However, the employer paid Ms. McDonald slightly less than that, \$1,743.06, when the employer issued Ms. McDonald’s final paycheck in February 2012.

In connection with Ms. McDonald’s separation from the employment, the employer offered Ms. McDonald the opportunity to collect an additional “Special Consideration” amount equal to 6.99 weeks of her regular salary if she would agree to waive all current or future rights to file suit against the employer or its agents, and relieve the employer and its agents for liability in connection with the same. Ms. McDonald signed the Termination and Release Agreement to obtain the additional 6.99 weeks of pay. The monetary value of the additional pay was \$4,060.77.

After the layoff, and after she received the 6.99 weeks in “standard severance” pay, Ms. McDonald established an “additional claim” for unemployment insurance benefits that was effective February 5, 2012. Ms. McDonald’s weekly unemployment insurance benefit amount had previously been set at \$296.00. In connection with the additional claim for benefits, Ms. McDonald received \$296.00 in weekly benefits for the week ending February 11, 2012 through the week ending April 14, 2012. Ms. McDonald then received \$174.59 in benefits for the week ending April 21, 2012, as she was at that point exhausting her eligibility for regular state unemployment insurance benefits. Ms. McDonald then received four weeks of emergency unemployment insurance compensation (EUC) before her benefit year ended on May 19, 2012. Ms. McDonald then established a new “original claim” for benefits and received additional benefits.

On February 7, 2012, Workforce Development mailed the employer a notice of claim concerning the “additional claim” for benefits that Ms. McDonald had established on February 5, 2012. The notice of claim provided a February 17, 2012 deadline for the employer’s response. Workforce Development records indicate that the employer never responded to the notice of claim mailed to the employer on February 7, 2012.

On May 25, 2012, Workforce Development mailed the employer a new notice of claim concerning the new “original claim” for benefits that Ms. McDonald had established on May 20, 2012. The notice of claim mailed to the employer on May 25, 2012 contained a June 4, 2012 deadline for the employer’s response. The Unemployment Insurance Service Center received the employer’s response by fax on May 31, 2012. Unfortunately, only two pages of the employer’s four-page response were scanned onto the Workforce Development computer server. Only those two pages of the response are available to the administrative law judge. The first page that remains available is the notice of claim form, which was completed by the employer on May 31, 2012. The remaining available page is a copy of a paystub that reflects payment of the 120 hours in vacation pay.

A Workforce Development representative treated the employer’s timely response to the new, May 25, 2012 notice of claim, and the information the employer provided about vacation pay and severance pay in response to that new notice of claim, as a basis for redetermining Ms. McDonald’s claim for benefits for the earlier claim that was in effect prior to May 20, 2012.

REASONING AND CONCLUSIONS OF LAW:

This particular case number concerns only the severance pay issue.

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 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.

871 IAC 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

871 IAC 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 Section of Iowa Workforce Development has historically interpreted “severance pay” and the equivalent to include a voluntary benefit used to attract employees or “conscience money” to help a former employee survive a layoff. The Appeals Section has historically 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 weight of the evidence establishes that the employer did indeed pay Ms. McDonald 6.99 weeks of bona fide severance pay for the period that began December 7, 2011. Ms. McDonald delayed filing her additional claim for unemployment insurance benefits until after the period of bona fide severance pay. The administrative law judge notes that the employer determined to the period to which the bona fide or “standard severance” would be paid to Ms. McDonald. The 6.99 weeks of “standard severance” pay would have no effect on the additional claim for unemployment insurance benefits that was not established until February 5, 2012.

The weight of the evidence establishes that the additional 6.99 weeks of “special consideration” was not bona fide severance pay or the equivalent. Instead, the employer paid this additional amount, \$4,060.77, to Ms. McDonald in exchange for her agreement to waive any and all right to legal action against the employer or its agents as present or in the future. This additional amount the employer paid to Ms. McDonald as a legal settlement is not deductible from her unemployment insurance benefits.

Thus, it does not much matter that the employer provided the severance pay information in an untimely manner, since the bona fide severance was paid for a period that predated the claim for benefits and the “special consideration” amount was not deductible from unemployment insurance benefits.

DECISION:

The Agency representative’s November 7, 2012, reference 02, decision is reversed. The claimant did not receive severance pay that was deductible from her unemployment insurance benefits. The claimant is eligible for benefits provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/tll