IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

RYAN D KRUEGER
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 14A-UI-11394-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/28/14
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Overpayment
Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 30, 2014 (reference 02) unemployment insurance decision that deducted severance pay from his unemployment insurance benefits. After due notice was issued, a telephone hearing was held on November 24, 2014. Claimant participated.

ISSUES:

Was the severance pay deducted for the correct period and if not was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated on October 1, 2014. He normally worked from 7:00 a.m. until 4:30 p.m. Monday through Friday with a one-half hour unpaid break for lunch each day. He was paid $11 per hour. He would normally work on Saturday for six hours and was paid time and one-half. He worked as normal on Monday (September 29) and Tuesday (September 30) and until 3:00 p.m. on October 1, 2014. The claimant worked and earned a total of $280 for the 25.5 hours he worked during his last week of employment. The employer reported earnings of $451 which is inaccurate. The employer reported that they paid the claimant a total of $253 in severance pay or 23 hours. The claimant normally worked over forty hours in a week. The claimant does not dispute that the employer paid him severance pay. The claimant reported total earnings of $451. With his earnings for the hours he actually worked and the severance pay he received, the claimant should have reported $533. The claimant should not have received any unemployment for the week ending October 4, 2014 due to his receipt of severance pay and wages.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was correctly deducted from benefits.

Iowa Code § 96.5-5 provides:

> An individual shall be disqualified for benefits:
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> 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:
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> a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
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> b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
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> 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.
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> 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.

Iowa Admin. Code r. 871-24.16(3) provides:

> (3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

The claimant received severance pay that represents wage replacement all of which are deductible from her unemployment insurance benefits. Therefore, the entire amount of severance pay was correctly deducted from the week ending October 4, 2014.

Iowa Code § 96.3-7, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
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> b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.
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> (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant was overpaid unemployment insurance benefits due to his receipt of severance pay. The claimant was overpaid $187. The overpayment made to the claimant has been recouped through benefits paid to him for the week ending Novmeber1, 2014 and the claimant's total balance due and owing to Iowa Workforce Development Department is $0.

DECISION:

The October 30, 2014 (reference 02) decision is affirmed. The severance pay was deducted for the correct period. The claimant was overpaid $187 in unemployment insurance benefits, but those benefits have been repaid to the Agency and his total overpayment balance now stands at $0.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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