

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EILEEN M TAYLOR
Claimant

APPEAL NO. 09A-UI-06148-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWN, WINICK & GRAVES
Employer

**Original Claim: 12/28/08
Claimant: Appellant (2)**

Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant, Eileen Taylor, filed an appeal from a decision dated April 9, 2009, reference 01. The decision disqualified her from receiving unemployment benefits for the one-week period ending January 10, 2009, due to the receipt of severance pay. After due notice was issued, a hearing was held by telephone conference call on May 18, 2009. The claimant participated on her own behalf. The employer, Brown, Winick & Graves, did not provide a telephone number where a witness could be contacted and did not participate. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the severance pay was deducted for the correct period.

FINDINGS OF FACT:

The claimant was separated on December 31, 2008. She was paid through that day but did not receive any severance pay from the employer.

REASONING AND CONCLUSIONS OF LAW:

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 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 claimant did not receive any severance pay from the employer and the deduction from her unemployment benefits was not appropriate.

DECISION:

The representative's decision of April 9, 2009, reference 01, is reversed. Eileen Taylor did not receive any severance pay and the amount was inappropriately deducted from her unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw