

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL E JOSEPH
Claimant

APPEAL NO: 07A-UI-07570-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FINE EDUCATION RESEARCH FDTN
Employer

**OC: 07/01/07 R: 02
Claimant: Appellant (1)**

Section 96.5-5 - Severance Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 31, 2007, reference 01, that concluded she was ineligible to receive unemployment insurance benefits for the 13 weeks ending October 13, 2007, due to the receipt of severance pay. A telephone hearing was held on August 22, 2007. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A and A-1 were admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible severance pay?

FINDINGS OF FACT:

The claimant worked for the employer from January 1999 through June 30, 2007. Shortly before her last day of work, the claimant received severance pay and pay for unused vacation. The claimant received severance pay of \$9,290.51, which would amount to 520 hours or 65 workdays of severance pay. She also received \$1,169.72 for unused vacation pay, which would amount to 8 days of vacation pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 1, 2007. Her weekly benefit amount was \$347.00. The employer responded to the Notice of Claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer designated the period from July 2 through July 11, 2007, as the period to which the vacation pay was to apply, and July 12 through October 11, 2007, as the period to which the severance pay was to apply.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received severance pay deductible from her unemployment insurance benefits.

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which she claims unemployment insurance benefits and has severance pay attributable to the same week. If the amount of severance pay applied to a week is less than the weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the severance pay applied to the week. Iowa Code § 96.5-5-a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar days after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1). Severance pay if properly reported is considered a wage replacement, which reduces the amount of unemployment insurance benefits payable.

In this case, the claimant received severance pay and the employer timely designated the period to which the pay was attributable as July 12 through October 11, 2007. There is nothing unreasonable about this designation, and the claimant is, therefore, ineligible for unemployment insurance benefits through the week ending October 13, 2007.

The fact that the payment was made before the claimant's last day of work does not affect whether the payment was deductible under the law. It is an administrative law judge's duty to apply the law as written, not rewrite the law to achieve a desired outcome.

DECISION:

The unemployment insurance decision dated July 31, 2007, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the 13 weeks ending October 13, 2007, due to the receipt of severance pay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css