

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS M MCDANIEL
Claimant

APPEAL NO. 08A-UI-07639-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POSITIVE IMPACT MEDIA INC
KZZQ-FM
Employer

OC: 06/22/08 R: 02
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Travis McDaniel filed an appeal from a representative's decision dated August 20, 2008, reference 02, which held him not eligible to receive unemployment insurance benefits for the week ending June 28, 2008, because the claimant received severance pay that equaled or exceeded his benefit amount. After due notice was issued, a hearing was scheduled for and held by telephone on September 18, 2008. The claimant participated personally. The employer participated by David Nadler, executive director. Exhibit D-1 was received into evidence.

ISSUE:

At issue in this matter is whether the claimant received disqualifying severance pay and, if so, whether Iowa Workforce Development appropriately determined the period to which the severance pay should be applied.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Mr. McDaniel was employed as a sales person for KZZQ-FM. until being separated from employment on June 26, 2008. The claimant's final pay from KZZQ-FM was issued to Mr. McDaniel on or about July 15, 2008, in the amount of \$2,263.15. The remuneration was for commissions that Mr. McDaniel had earned prior to being discharged from employment. The claimant received no severance pay from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant received no disqualifying severance pay and therefore severance was deducted incorrectly.

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.

The evidence in the record is undisputed that the claimant received no severance pay from this employer. The remuneration that the claimant received on or about July 15, 2008, in the amount of \$2,263.15, was payment for commissions that the claimant had worked for and earned prior to being separated from employment. It appears that the employer inadvertently placed this amount in a severance pay portion of its response on a Notice of Claim form, leading Iowa Workforce Development to conclude that the claimant had received severance pay, when he had not.

DECISION:

The August 20, 2008, reference 02, decision is reversed. The claimant did not receive disqualifying severance pay in the amount of \$2,263.15 and is eligible to receive unemployment insurance benefits for the week ending June 28, 2008, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw