

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN P KELLEN
Claimant

APPEAL NO. 08A-UI-06705-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST COMMUNITY CREDIT UNION
Employer

**OC: 06/01/08 R: 01
Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

John Kellen filed an appeal from a representative's decision dated July 15, 2008, reference 02, which held him not eligible to receive unemployment insurance benefits for the 16 weeks ending October 11, 2008, finding that the claimant received or was entitled to receive severance pay that equaled or exceeded his weekly benefit amount. After due notice was issued, a telephone conference hearing was held on Wednesday, August 6, 2008. Mr. Kellen participated personally. The employer participated by Ms. Paddy Friedrichsen. Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant received disqualifying severance pay.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: John Kellen, the claimant, was employed through May 7, 2008, when he was separated from employment. Mr. Kellen held the position of CEO and was paid an annual salary of \$73,730. At the time of separation, the claimant was issued vacation pay as well as his remaining pay for the services he had performed. In addition, the claimant was offered \$24,333.32 in consideration of agreeing to make the agreement confidential and to release the employer from any cause of action relating to Mr. Kellen's employment or his separation therefrom. (See Exhibit Two)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the payment of \$24,333.32 offered but not accepted by the claimant was not severance pay but was offered as consideration for an agreement not bring legal action against the employer based upon the claimant's employment or separation therefrom.

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.

Since the offer of the payment was in consideration for the claimant agreeing not to bring legal action against the employer based upon the claimant's employment or separation from employment, the offer made by the employer is not severance pay but payment in consideration of the obligation not to bring legal action and is not considered wages. Therefore, the consideration offered to the claimant in the amount \$24,333.32 should not be deducted from benefits. The claimant is thus eligible to receive unemployment insurance benefits for the week

ending June 28, 2008 and thereafter, provided he meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated July 15, 2008, reference 02, is hereby reversed. The claimant is eligible to receive unemployment insurance benefits for the 16 weeks ending October 11, 2008, provided he meets all other eligibility requirements of Iowa law. The claimant did not receive disqualifying severance pay but an offer of consideration in exchange for foregoing a legal right.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw