

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVE R BESCO**  
Claimant

**APPEAL NO. 09A-UI-11741-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELDERMAN MANUFACTURING CO**  
Employer

**OC: 01-04-09**  
**Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 13, 2009, reference 01, decision that deducted severance pay from his unemployment insurance benefits. After due notice was issued, a hearing was held on August 31, 2009. The claimant did participate. The employer did participate through Kathi Schelker, Controller. Department's Exhibit D-1 was received.

**ISSUE:**

Did the claimant receive unemployment insurance benefits and if so was it deducted for the correct period?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was separated December 31, 2008 and did receive a Christmas bonus of two-thousand dollars. At hearing the employer admitted that she had erroneously indicated on the notice of protest form that the claimant was paid severance pay. The claimant was not paid any severance pay.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the severance pay deduction was incorrect.

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 was not paid any severance pay, he was paid a Christmas bonus, thus the deduction from his unemployment insurance benefits was incorrect.

**DECISION:**

The August 13, 2009, reference 01, decision is reversed. The severance pay was deducted incorrectly.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs