

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TIMOTHY GERBUS**  
Claimant

**IOWA MOLD TOOLING CO INC**  
Employer

**APPEAL 16A-UI-04754-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/21/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 14, 2016 (reference 03) unemployment insurance decision that deducted severance pay from benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 9, 2016. The claimant participated personally. The employer participated through Dawn Gamerdinger. Department Exhibits D-1 and D-2 were admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant receive severance pay and, if so, was it correctly deducted from benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on February 18, 2016. He received a lump sum severance payment on April 8, 2016 in the amount of \$16,622.40, representing 240 hours of work, at a rate of pay of \$69.26 per hour.

In order to receive the severance payment, the claimant was required to sign an agreement and release of claims against the employer. Severance pay is generally defined as money paid to an employee who is dismissed because of a lack of work or other reasons beyond the employer's control but does not require anything further in exchange.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not receive severance pay that would be deductible from benefits.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.13(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.

In this case, the claimant was required to sign a severance agreement and release of claims in exchange for the lump sum payment he received on April 8, 2016. Since the claimant is expected to agree to the terms of the severance agreement, payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant but was for a contractual obligation. Payment in consideration of that obligation is not considered wages. Therefore, the severance agreement consideration should not be deducted from benefits and the entire amount of "severance" pay was incorrectly defined and deducted. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The April 14, 2016 (reference 03) decision is reversed. The claimant did not receive severance pay and the contract consideration was incorrectly defined and deducted.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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