

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BARBARA A NYREEN
2542 S CORNELIA
SIOUX CITY IA 51106

HOSPICE OF SIOUXLAND
224 4TH ST
SIOUX CITY IA 51101

Appeal Number: 04A-UI-01558-B4T
OC: 01/04/04 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-5 – Whether the Severance Pay was Deducted for the Correct Period.

STATEMENT OF THE CASE:

Barbara A. Nyreen appealed from an unemployment insurance decision dated February 5, 2004, reference 02, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits for the four weeks ending February 7, 2004, because the records indicated that she was receiving or entitled to receive severance pay or separation allowance which was considered to be wages and would preclude the claimant from receiving benefits for any week in which the payment equaled or exceeded her weekly benefit amount.

A consolidated telephone conference hearing was scheduled and held on March 1, 2004 pursuant to due notice. Barbara A. Nyreen participated. No one responded on behalf of the

employer to the notices of hearing mailed to the employer by providing the name and telephone number of the representative to be contacted.

Official notice was taken of the unemployment insurance decision bearing reference 01 together with the pages attached thereto (6 pages in all). Official notice was also taken of the unemployment insurance decision bearing reference 02, together with the pages attached thereto. (6 pages in all). Employer Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Barbara A. Nyreen was employed as the Human Resource Manager with Hospice of Siouxland from November 11, 2002 through January 8, 2004. Following the separation of the claimant's employment, she filed a claim for benefits having an effective date of January 4, 2004. Subsequently, a notice of claim was mailed to the employer. A timely protest filed. The protest indicated the claimant was paid vacation pay in the amount of \$846.37 to be applied to the period from February 7, 2004 through February 20, 2004. In addition, the claimant was provided with severance pay in the amount of \$4,749.06, which was to be applied to the period from January 9, 2004 through February 10, 2004.

Application of the vacation pay as prescribed by the employer would preclude the claimant from receiving benefits for the two weeks ending February 21, 2004.

Proper application of the severance pay would preclude the claimant from receiving benefits for the four weeks ending February 7, 2004.

REASONING AND CONCLUSIONS OF LAW:

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 evidence in the record clearly establishes that the claimant received severance pay in the amount of \$4,749.06 which was designated to be applied to the period from January 4, 2004 through February 10, 2004 by Hospice of Siouxland. Proper application of the severance pay would preclude the claimant from receiving benefits for the four benefit weeks ending February 7, 2004 all within the intent and meaning of Iowa Code Section 96.5-5 and the foregoing sections of the Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated February 5, 2004, reference 02, is affirmed. Barbara A. Nyreen is not eligible to receive unemployment insurance benefits for the four weeks ending February 7, 2004.

kjf/b