

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH M FREIBOTH
Claimant

APPEAL NO. 08A-UI-06933-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE IOWA PRIMATE LEARNING
SANCTUARY**
Employer

**OC: 06/22/08 R: 02
Claimant: Appellant (1)**

Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

The claimant, Judith Freiboth, filed an appeal from a decision dated July 25, 2008, reference 02. The decision disqualified her from receiving unemployment benefits for the one-week period ending June 28, 2008, due to the receipt of severance pay. After due notice was issued a hearing was held by telephone conference call on August 13, 2008. The claimant participated on her own behalf. The employer, Iowa Primate Learning Sanctuary, participated by Director of Operations James Aipperspach and Director of Human Resources Susan McKee.

ISSUE:

The issue is whether the claimant is disqualified due to the receipt of severance pay.

FINDINGS OF FACT:

Judith Freiboth filed a claim for unemployment benefits with an effective date of June 28, 2008. The claimant was separated on April 1, 2008, and received severance pay in the amount of \$10,557.48 based upon a rate of pay at \$42,230.00 per year. The employer did designate the period of time to which the severance pay was to be applied.

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.

Because the employer did designate a time period to which the severance pay is to apply, the entire amount was correctly deducted from the first week of benefits following the separation. Judith Freiboth received severance pay for the period April 1 through June 30, 2008.

DECISION:

The representative's decision of July 25, 2008, reference 02, is affirmed. The severance pay was deducted for the correct period.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs