

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC P LAFFEY
Claimant

APPEAL NO. 09A-UI-02562-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLB FINANCIAL GROUP INC
Employer

OC: 10-05-08
Claimant: Appellant (4)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 11, 2009, reference 02, decision that deducted severance pay from his unemployment insurance benefits. After due notice was issued, a hearing was held on March 12, 2009. The claimant did participate. The employer did participate through Amy Lundeen, Senior Human Resources Specialist. Department's Exhibit D-1 was received.

ISSUE:

Was the severance pay 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 separated on October 8, 2008. While the employer indicated on the notice of protest form that the claimant was paid \$10,584.66 in severance dismissal separation allowance or wages in lieu of notice, they clarified at the hearing that the claimant was paid \$7,001.32 for payment in lieu of wages and \$3,583.34 in severance pay. In order to receive the payment they classified the claimant was required to and did sign a settlement and release form. The claimant would have been paid the payment in lieu of wages whether he signed the release or not. The claimant established a claim for benefits with an effective date of October 5, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the \$3,583.34 severance pay was incorrectly deducted from the claimant's unemployment insurance benefits.

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.

A payment after separation which is conditioned upon execution of a release or waiver of claims is not "severance pay" as contemplated by the statute. It is more aptly characterized as consideration given by the employer to the claimant for waiver of possible causes of action against the employer and not simply payment for prior years of service to the employer. At hearing the employer admitted that the payment was in exchange for the claimant's signing of the release, thus it cannot be considered severance pay that is deductible from the claimant's unemployment insurance benefits. None of the \$3,583.34 should have been deducted from the claimant's unemployment insurance benefits.

For the reasons that follow, the administrative law judge concludes the \$7,001.32 payment in lieu of wages was correctly deducted from the claimant's unemployment insurance benefits.

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.

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The employer clarified at hearing that the payment in lieu of wages was for the time period from October 9, 2008 through December 5, 2008 and would have been given to the claimant regardless of his signing a waiver. Thus, the deduction should only have been made from the claimant's unemployment insurance benefits for the eight-week period ending December 6, 2008.

DECISION:

The February 11, 2009, reference 02, decision is modified in favor of the appellant. The severance pay was incorrectly deducted from the claimant's unemployment insurance benefits but the payment in lieu of wages was correctly deducted from the claimant's unemployment insurance benefits.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs