

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA L DOSTAL
Claimant

APPEAL NO. 09A-UI-06772-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CEDAR RAPIDS AREA
CHAMBER OF COMMERCE**
Employer

**Original Claim: 01/18/09
Claimant: Appellant (1)**

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 22, 2009, reference 02, decision that held the claimant not eligible to receive unemployment insurance benefits for four weeks ending February 14, 2009, upon a finding the claimant was receiving or entitled to receive severance pay. After due notice was issued, a telephone conference hearing was scheduled for and held on May 28, 2009. The claimant participated personally. Participating on behalf of the employer was her attorney, Mr. Gary Shea. Although duly notified, the employer did not participate. Claimant's Exhibit A and Department's Exhibit D-1 were received into evidence.

ISSUE:

Whether the severance pay was deducted for the correct period.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant was separated from employment with the Cedar Rapids Area Chamber of Commerce and subsequently opened a claim for unemployment insurance benefits effective January 18, 2009. The claimant received severance pay from her employer in the amount of \$1,030.00 for the weeks ending January 24, 2009; January 31, 2009; February 7, 2009; and February 14, 2009. As her severance pay equaled or exceeded her weekly benefit amount, Ms. Dostal was not eligible to receive unemployment insurance benefits for those weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance was deducted for the correct period.

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.

Based upon the evidence in the record, the administrative law judge concludes that the severance pay was deducted for the correct period, for the week-ending date January 24, 2009, through the week-ending date February 14, 2009.

DECISION:

The April 22, 2009, reference 02, decision is affirmed. The severance pay was deducted for the correct period.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw