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

SARA R GODWIN
Claimant

**AMERICAN EQUITY INVEST LIFE
INSURANCE COMPANY**
Employer

APPEAL NO. 17A-UI-05392-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Appellant (1)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Sara Godwin (claimant) appealed a representative's May 12, 2017 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits for the week ending April 22, 2017, due to the receipt of severance pay from American Equity Invest Life Insurance Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 7, 2017. The claimant participated personally. The employer participated by Tara Banks, Senior Counsel, and Kathy Bemisdarfer, Vice President of Human Resources. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant received severance pay or wages and, therefore, is not eligible to receive unemployment insurance benefits for the week ending April 22, 2017.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from March 24, 2015, until April 20, 2017, as a full-time service technician. She earned $17.05 per hour. The claimant signed for receipt of the employer's handbook on January 25, 2017. The employer has a policy which gives employees their years' worth of paid time off to use at the beginning of the year, even though they have not earned it yet. The handbook states that any used paid time off that was not earned will be owed back to the employer at the time of termination. The handbook does not describe the mechanics of how this will be paid.

At the end of the claimant's employment the claimant had used more days of paid time off than she had earned and the employer wanted the $1,469.39 back. The claimant was due $1,388.64 in severance pay. The employer kept the claimant's total severance pay and told her she owed them $80.75. The claimant was not given any other options for repayment.

The claimant filed her claim for unemployment insurance benefits with an effective date of April 16, 2017. Her weekly benefit amount is $480.00. On the notice of claim the employer

reported the claimant received $1,388.64 in severance pay. The notice of claim reports income of $545.60 for the 32 hours the claimant worked in her last week with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant did not receive severance pay for the week ending April 22, 2017.

Iowa Code § 96.5(5) provides:

> An individual shall be disqualified for benefits:
>
> 5. Other compensation.
>
> a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
>
> (1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
>
> (2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
>
> (3) 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 subparagraph, 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.
>
> b. 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", subparagraph (1), (2), or (3), 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.

The claimant did not receive any severance pay for the week ending April 22, 2017. The company withheld the claimant's severance pay for time off taken before the separation. The handbook did not notify the claimant that any wages would be withheld for the payment of the claimant's paid time off. The employer garnished the claimant's total severance package without notice and an opportunity to be heard.

During the week ending April 22, 2017, the claimant had earnings of $545.60. The wages are greater than her weekly benefit amount ($480.00) plus $15.00 ($495.00). Her income is too large for her to be eligible to receive unemployment insurance. Benefits are denied for the week ending April 22, 2017.

DECISION:

The May 12, 2017, reference 03, decision is affirmed. The claimant did not receive severance pay. She is not eligible to receive unemployment insurance benefits for the week ending April 22, 2017, due to the receipt of wages.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs