

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN A HOSS
Claimant

APPEAL NO. 09A-UI-00237-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUGUST HOME PUBLISHING CO
Employer

**OC: 10/26/08 R: 02
Claimant: Appellant (2-R)**

Iowa Code section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Susan Hoss filed a timely appeal from the December 30, 2008, reference 02, decision that denied benefits for the four-week period that ended November 22, 2008. After due notice was issued, a hearing was held on January 21, 2009. Ms. Hoss participated. Laura Thomas, Senior Accountant, represented the employer and presented additional testimony through Michal Sigel, Professional Development Director. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-00238-JTT. Exhibit One and Department Exhibits D-1 through D-4 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether Ms. Hoss received severance pay, or the equivalent, that was deductible from her unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any severance pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any severance pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Hoss was employed by August Home Publishing Company as the full-time editor of Cuisine magazine until August 13, 2008, when the employer discharged her from the employment. Ms. Hoss's last day on the job was October 13, 2008. In connection with her separation from the employment, Ms. Hoss received vacation pay in the amount of \$2,980.65. Ms. Hoss also received "personal holiday" pay of \$298.07. The vacation pay represented 10 days of accrued vacation benefit and the "personal holiday" pay represent one day of accrued "personal holiday" pay benefit.

In connection with Ms. Hoss's separation from the employment, the employer executed a "Separation and Release Agreement" with Ms. Hoss. See Exhibit One. The legal settlement agreement was drafted by the employer's legal counsel. Under the agreement, the employer agreed to pay Ms. Hoss \$17,150.00 in exchange for her agreement to "a full and complete release of any and all claims (except for unemployment compensation benefits and Employee's rights to her 401K account)..." The agreement included an exhaustive list of federal, state or local laws that could serve as a possible cause of action against the employer and indicated that Ms. Hoss was specifically waiving her right to bring a cause of action under any of the laws. The agreement included a provision whereby Ms. Hoss was prohibited from making any disparaging remarks about the employer. The agreement contained additional provisions by which Ms. Hoss would be bound if she executed the agreement. Ms. Hoss and the employer both signed the agreement. Pursuant to the terms of the agreement, the employer paid the \$17,150.00 settlement amount in three installments at the start of September, October, and November.

Ms. Hoss established a claim for unemployment insurance benefits that was effective October 26, 2008. Ms. Hoss waited until she had received the final installment of the legal settlement amount before she applied for unemployment insurance benefits. At the time Ms. Hoss established her claim for benefits, Workforce Development calculated Ms. Hoss's weekly benefit amount to be \$361.00. For the week ending November 1, 2008, Ms. Hoss reported wages or the equivalent that exceeded her weekly benefit amount and, accordingly, received no unemployment insurance benefits. The wages Ms. Hoss reported for the week ending November 1 consisted of the final installment of the legal settlement amount she had received from the employer. For the next 10 weeks, from November 2, 2008 through January 10, 2009, Ms. Hoss reported no wages and was approved for weekly benefits. For all but the last three weeks, Workforce Development disbursed the weekly benefits, minus applicable taxes, by direct deposit to Ms. Hoss's bank account. During the three week period of December 21, 2008 through January 10, 2009, Workforce Development approved benefits, but withheld benefits so that they could be offset against what the Agency then believed was a prior overpayment of benefits.

On November 4, 2008, Workforce Development mailed the employer a notice of claim concerning Ms. Hoss. The notice of claim contained a November 14, 2008 deadline for the employer's response. Workforce Development received the employer's response by fax on November 6, 2008. The employer indicated that it was not contesting the claim for benefits. The employer indicated that Ms. Hoss had received vacation benefits totaling \$3,278.72. The employer designated August 14, 2008 through August 28, 2008 as the period to which the vacation benefits should be applied for unemployment insurance purposes. This period predated the effective date of Ms. Hoss's claim for unemployment insurance benefits. The employer indicated that Ms. Hoss had received severance pay or the equivalent totaling \$17,150.00. The employer designated August 29, 2008 through November 18, 2008 as the period to which the "severance pay" should be applied for unemployment insurance purposes. While much of this period predated the effective date of Ms. Hoss's claim for unemployment insurance benefits, the four-week period of October 26, 2008 through November 22, 2008 comprised the first four weeks during which Ms. Hoss had an active claim for unemployment insurance benefits.

Because the employer had made a timely designation of the period to which the vacation pay and the "severance pay" should be applied, a Workforce Development representative used this information to allocate the vacation pay and the "severance pay" over the periods designated by the employer. The Workforce Development representative allocated \$1,478.45 in "severance pay" to the week ending November 1, November 8, and November 15, 2008. The Workforce

Development representative allocated two remaining days of "severance pay," or \$591.38, to the week ending November 22, 2008. Based on the allocation of the "severance pay," the Workforce Development representative concluded that for each of the four weeks in question, Ms. Hoss had received "severance pay" that exceeded her weekly unemployment insurance benefit amount and, therefore, concluded that Ms. Hoss was not eligible for unemployment insurance benefits for the four-week period of October 26, 2008 through November 22, 2008. Because Ms. Hoss had received benefits for the weeks that ended November 8, November 15, and November 22, 2008, the Workforce Development representative concluded that Ms. Hoss had been overpaid benefits and entered an overpayment decision.

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 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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.

An individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits that would otherwise be due, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a lay off. The Appeals Section has historically excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the employee's separation from the employment. The greater weight of the evidence in the record indicates that the settlement amount at issue in this case arose out of an attempt by the employer to resolve legal matters, or potential legal matters, between itself and Ms. Hoss. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to Ms. Hoss would fall outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code section 96.5(5). Ms. Hoss did not receive severance pay. Accordingly, the Workforce Development representative was in error when the representative deducted severance pay from Ms. Hoss's unemployment insurance benefits. The claimant was eligible for unemployment insurance benefits during the four-week period of October 26 through November 22, 2008, provided she was otherwise eligible.

This matter will be remanded to the Claims Division for a determination of whether, in light of the present decision, Ms. Hoss was underpaid benefits for the week ending November 1, 2008.

DECISION:

The Agency representative's December 30, 2008, reference 02, decision is reversed. The claimant did not receive severance pay. The Workforce Development representative was in error when the representative deducted severance pay from the claimant's unemployment insurance benefits. The claimant was eligible for unemployment insurance benefits during the four-week period of October 26 through November 22, 2008, provided she was otherwise eligible.

This matter will be remanded to the Claims Division for a determination of whether, in light of the present decision, the claimant was underpaid benefits for the week ending November 1, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw