

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS F REED
Claimant

APPEAL NO. 09A-UI-08724-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INLAND TRUCK PARTS CO
Employer

OC: 02/15/09
Claimant: Appellant (1)

Section 96.5-5 – Severance Pay Deduction for Correct Period
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Dennis Reed filed an appeal from a representative's decision dated June 5, 2009, reference 02, which held him not eligible to receive unemployment insurance benefits for the two-week period ending March 14, 2009 as the claimant was receiving or was entitled to receive severance pay which equaled or exceeded his weekly benefit amount. After due notice, a telephone hearing was scheduled for and held on July 6, 2009 in conjunction with appeals 09A-UI-08723-NT and 09A-UI-08725-NT. Mr. Reed participated personally. The employer participated by Kara Specht, Payroll Administrator.

ISSUE:

The issue in this matter is whether the claimant's appeal was timely and whether severance pay was deducted for the correct period.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant has established good cause for a late filing of this appeal. The claimant reopened the claim for unemployment insurance benefits effective February 15, 2009. The claimant had been separated from employment on Monday, February 16, 2009. Upon separation, Mr. Reed was given severance pay in the amount of \$1,056.00 based upon an hourly rate of \$13.20 per hour. The employer did designate the period of time to which the severance pay was to be applied as a normal two-week period of 80 work hours. The agency applied 32 hours of severance pay remaining in the initial week Mr. Reed filed his claim for benefits and applied 40 hours of severance pay to the following week ending date of March 14, 2009. The remaining 8 hours was applied to the week ending March 21, 2009.

Mr. Reed had also received vacation pay, 32 hours of which had been applied to the week ending February 21, 2009; 40 hours to the week ending February 28, 2009 and the remaining 8 hours to the week ending March 7, 2009

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the severance pay 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.

As the employer designated the time period to which the severance pay was to be allocated, the agency correctly deducted the severance pay for the weeks in question based upon the period of time designated by the employer as well as the claimant's hourly rate of pay.

DECISION:

The June 5, 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

pjs/pjs