

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BECKY J MADDEN**  
Claimant

**APPEAL NO. 08A-UI-02206-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOON COMMUNITY SCHOOL DIST**  
Employer

**OC: 02-03-08 R: 02  
Claimant: Appellant (1)**

Section 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 3, 2008, reference 01, decision that deducted severance pay from her unemployment insurance benefits. After due notice was issued, a hearing was held on March 27, 2008. The claimant did participate. The employer did participate through Paulette Newbold, Accountant and Office Manager. Department's Exhibit D-1 was received. Employer's Exhibit One was received.

**ISSUE:**

Was the severance pay deducted for the correct period?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on January 28, 2008, and received severance pay in the amount of \$939.75 based upon a rate of pay at \$12.53 per hour. The claimant worked a 7.5-hour day, so her daily pay was \$93.98 per day. The employer did designate the period of time to which the severance pay was to be applied as from January 28, 2008 through February 8, 2008.

The claimant also received vacation pay in the amount of \$751.80 based upon a rate of pay at \$12.53 per hour. The claimant was paid for eight vacation days. The claimant worked 7.5 hours per day, so her daily pay was \$93.98. The employer did designate the period of time to which the vacation pay was to be applied as from February 11, 2008 through February 20, 2008.

The claimant filed a claim for benefits with an effective date of February 3, 2008.

For the week ending February 2, 2008, the claimant received \$469.90 in severance pay (five days at seven and one-half hours per day times \$12.53 per hour = \$469.90). She received no unemployment insurance benefits for the week ending February 2, 2008 and no claim was filed. For the week ending February 9, 2008, the claimant received \$469.90 in severance pay. She received no unemployment insurance benefits for the week ending February 9, 2008. For the week ending February 16, 2008, the claimant reported \$488.00 in wages. She received

\$469.90 in vacation pay (five days at seven and one-half hours per day times \$12.53 per hour = \$469.90). She received no unemployment insurance benefits for the week ending February 16, 2008. For the week ending February 23, 2008, the claimant reported \$148.00 in wages. She received \$281.94 in vacation pay (three days vacation at 93.98 per day = \$281.94). The claimant was paid \$302.00 in unemployment insurance benefits for the week ending February 23, 2008. The claimant later called her local office and indicated she had incorrectly reported her wages for the week ending February 23, 2008. The claimant indicated she had failed to report \$141.00 in wages in the form of vacation pay for the week ending February 23, 2008. The claimant meant to report a total of \$289.00 in wages for the week. The agency calculations indicate the claimant should have received \$78.00 dollars in unemployment insurance benefits, not \$302.00; thus, the agency determined the claimant was overpaid that week in the amount of \$224.00 ( \$302.00 – \$78.00 = \$224.00). The overpayment made to the claimant due to the incorrect reporting of wages was offset the next week when the claimant was only paid \$136.00 in unemployment insurance benefits and \$224.00 was withheld to repay the overpayment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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.

The employer designated the period to which the severance pay should apply and the claimant did receive the severance pay. Therefore, the entire amount of severance pay was correctly deducted for the two-week period ending February 9, 2008.

**DECISION:**

The March 3, 2008, reference 01, decision is affirmed. The severance pay was deducted for the correct period.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw