

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A MILLER-PRANKE
Claimant

APPEAL NO: 07A-UI-02976-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BOYS & GIRLS RESIDENTIAL TREATMENT
CENTER INC**
Employer

**OC: 03/04/07 R: 01
Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Julie A. Miller-Pranke (claimant) appealed a representative's March 26, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits until after March 31, 2007 due to the receipt of severance pay from Boys & Girls Residential Treatment Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2007. This appeal was consolidated for hearing with two related appeals, 07A-UI-02977-DT and 07A-UI-02901-DT. The claimant participated in the hearing. Roger Bentz appeared on the employer's behalf. During the hearing, Exhibit A-1 and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive severance pay and was it properly allocated and deducted?

FINDINGS OF FACT:

The claimant started working for the employer on July 13, 1992. She worked full time, Monday through Friday as a human resources specialist/assistant on an annualized hourly wage of \$17.30. Her last day of work was January 9, 2007. Her position was eliminated as of that date as part of a reduction in force.

When the claimant was informed of her job's elimination, she was informed that within a few days she would be receiving some paperwork in the mail. She received that paperwork, which was a proposed "Separation and Full Release Agreement" on or about January 12, 2007. (Claimant's Exhibit A.) In that agreement, the employer promised, upon acceptance of the agreement by the claimant and expiration of the revocation period, to pay the sum of \$5,939.35 to the claimant. This amount was calculated at the rate of three days for each year of service. The claimant accepted and signed the agreement on February 11, 2007, within the 45 days allowed after her receipt.

Paragraph Four of the agreement states, "The payments and agreement as set forth herein are not in the nature of severance payments but are in exchange for the mutual promises and assurances contained herein." The other paragraphs of the agreement contain various waivers of pursuance of any legal causes of action against the employer, such as under the various civil rights acts, breach of contract, or tort claims.

The claimant established an unemployment insurance benefit year effective March 4, 2007. A notice of claim was sent to the employer and a timely response was filed on behalf of the employer by Mr. Bentz, human resources specialist, who was not involved in the drafting or handling of the "Separation and Full Release Agreement." In the response, the amount of \$5,989.35 was identified as paid to the claimant as "severance pay, dismissal pay, separation allowance, or wages in lieu of notice." (Exhibit A-1.)

REASONING AND CONCLUSIONS OF LAW:

If severance pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

Iowa Code § 96.5-5-a 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.

While the terms "wages in lieu of notice, separation allowance, severance pay, or dismissal pay" are not separately defined within the statute or rules, to the extent the terms are not clear in the "context and the approved usage of the language," a more peculiar meaning specific to the context of deductibility from unemployment insurance benefit eligibility is "any remuneration received by a claimant as 'compensation for weeks not worked after separation'" such as where the primary purpose of the payment was to provide a cushion of additional compensation after the separation. Iowa Code §4.1(38); Pero v. Indus. Claim Appeals Office, 46 P.3d 484 (Colo. App. 2002). See also, Parker v. Underwriters Laboratories, Inc., 96 P.3d 618 (Idaho 2004) (quoting with approval The American Heritage Dictionary of the English Language (4th ed. 2000, defining "severance pay" as "a sum of money usually based on length of employment for which an employee is eligible upon termination," and 27 Am.Jur.2d Employment Relationship §70 (1996), "the purpose of a severance plan is to protect employees from economic hardship and to reward them for past service to the company."

A payment after separation which is conditioned upon execution of a release of claims is not "severance pay" as the consideration given by the claimant for the payment is the waiver of possible causes of action against the employer, not simply the prior years of service. Parker, supra; see also, DiCerbo v. Comm. of Dept. of Employment and Training, 763 N.E.2d 566 (Mass. 2002) (payments made in return for general release of claims not deductible as "severance pay.")

The employer's own form presented to the claimant in this case clearly indicates that the payment was not intended as "severance pay" but made in exchange for the "mutual promises and assurances" of the release. The amount paid to her under the agreement is not deductible against her unemployment insurance benefits as "severance pay."

DECISION:

The representative's March 26, 2007 decision (reference 02) is reversed. The claimant did not receive deductible severance pay from the employer and was eligible for unemployment insurance as of March 4, 2007, if she was otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs