

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL SHUTE
Claimant

APPEAL NO. 09A-UI-06574-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 01/11/09
Claimant: Appellant (2)

Section 96.5-5-a-b-c – Severance Pay

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 22, 2009, reference code 02, fact finder's decision that held the claimant not eligible to receive unemployment insurance benefits for 20 weeks, ending June 6, 2009 upon a finding that the claimant was receiving or entitled to receive severance pay. After due notice, a telephone hearing was conducted on May 26, 2009. Claimant participated personally. Exhibit D1 was received into evidence.

ISSUE:

At issue is whether the severance pay was 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 employed through September 12, 2008 as a Manager I for Qwest Corporation, receiving an annual salary of \$45,600.00. The claimant was laid off on September 12, 2008 and received severance pay in the amount of \$18,207.72. The employer did not designate the period of time to which the severance pay was to be applied. Mr. Shute did not open a claim for unemployment insurance benefits until the effective date of January 11, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for an incorrect 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 evidence in the record establishes that Mr. Shute was separated from his employment on September 12, 2008, but did not file an unemployment insurance claim until effective date of January 11, 2009. When allocated, the severance pay based upon the claimant's full time employment and the wage he received would equal or exceed the claimant's weekly benefit amount through the week ending date of February 7, 2009. Mr. Shute was thus ineligible to receive benefits for a 20-week period concluding on the week ending February 7, 2009. However, the claimant received but was ineligible for unemployment insurance benefits during the four weeks ending February 7, 2009.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

Representative's decision dated April 22, 2009, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits effective week ending February 21, 2009, provided that he meets all other eligibility requirements of Iowa law. Any benefits that the claimant has received during a period he was ineligible would constitute an overpayment. Accordingly the issue of overpayment is remanded to the UIS division for determination as to whether there has been an overpayment and whether the claimant will have to repay the benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/pjs