

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER R MATHIS**  
Claimant

**APPEAL NO. 08A-UI-03413-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADEL VETERINARY CLINIC PC**  
Employer

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

Iowa Code section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Jennifer R Mathis, D.V.M., filed a timely appeal from the April 4, 2008, reference 01, decision that denied benefits for the four-week period ending April 5, 2008 due to a severance pay issue. After due notice was issued, a hearing was held on April 22, 2008. Dr. Mathis participated. Tammy Prinz, Practice Manager, represented the employer. Owner Patrick Rohret, D.V.M., was also present on behalf of the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-03414-JTT concerning a related denial of benefits and vacation pay issue. Exhibits One and Two, and Department Exhibits D-1 through D-7, were received into the record.

**ISSUES:**

Whether the claimant received wages in lieu of notice, severance pay, separation allowance, or dismissal pay that is 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: Jennifer Mathis, D.V.M., was employed by Adel Veterinary Clinic, P.C., on a full-time basis until March 7, 2008, when owner Patrick Rohret, D.V.M, severed the employment relationship. At the start of the employment, the parties had entered into a written agreement, whereby the employer agreed to pay Dr. Mathis the equivalent of 30 days' wages and 16 days of vacation pay in the event the employer severed the employment relationship. At the time of the separation, the employer calculated the vacation pay total to be \$3,692.32, or \$230.77 per day. The employer calculated the 30 days' wages in lieu of notice to be \$5,291.50. Because Dr. Mathis had worked during the first week of March, the employer calculated that she was due wages of \$1,221.11 for the work she performed that week. Dr. Mathis does not dispute these compensation amounts.

The total amount due to Dr. Mathis at the time of separation was \$10,204.93. On March 7, 2008, the employer issued a final check for the net amount of \$6,887.96, based on a gross compensation amount of \$10,428.77. The check amount was a couple hundred dollars more than the amount the employer had calculated was due to Dr. Mathis. Dr. Mathis did receive the compensation. The employer did not require Dr. Mathis to sign a release of liability or enter into any other quid pro quo arrangement in order to receive the severance pay or wages in lieu of notice.

Dr. Mathis established a claim for unemployment insurance benefits that was deemed effective March 2, 2008, the Sunday that started the week in which Dr. Mathis submitted her application for benefits. At the time Dr. Mathis established her claim, she advised the Agency that her last day of employment had been March 7, 2008. The Agency calculated Dr. Mathis' weekly benefit amount to be \$360.00. The Workforce Development records suggest that Dr. Mathis made the Agency aware of the final compensation she had received from the employer at the time she applied for benefits, since no benefits have been disbursed to date.

On March 11, 2008, Workforce Development mailed the employer a notice of claim. The notice of claim contained a March 21, 2008 deadline for the employer's response. The employer's response was received by Workforce Development by fax on March 17, 2008. On or about March 17, Tammy Prinz, Practice Manager, had completed the employer's information on the notice of claim document. The employer did not protest the claim for benefits. However, Ms. Prinz provided information concerning benefits paid to Dr. Mathis in the spaces provided on the notice of claim form. Ms. Prinz indicated that Dr. Mathis had received severance pay, dismissal pay, separation allowance, or wages in lieu of notice in the amount of \$6,736.45. This statement of the severance amount was erroneous. Ms. Prinz had erroneously included in the severance amount the \$1,221.11 in wages Dr. Mathis was due for the work she performed during the first week of March and added this amount to the \$5,291.50 actual severance pay amount. Ms. Prinz designated the period to which the severance pay should be applied as March 8, 2008 through April 7, 2008. The starting date of this designated severance pay period was the day after the separation and the end date for this period was exactly 30 days after the start date. In other words, this 30-day period coincided with the 30-day period referenced in the employment contract and in the separation notice the employer had given to Dr. Mathis on March 7, 2008. On the notice of claim document, Ms. Prinz also indicated that Dr. Mathis had received vacation pay of \$3,692.32, and that this amount was to be applied to the period of April 8, 2008 through April 29, 2008. This covered a period of exactly three weeks and commenced the day after the designated severance period ended.

Based on the information provided by the employer in response to the notice of claim, a Workforce Development representative apportioned the severance pay over the period designated by the employer. In apportioning the severance pay, the Workforce Development representative utilized a standard five-day work week. Based on this formula, the Agency representative calculated a per diem severance amount of \$320.78. This translated into a weekly severance amount of \$1,603.90 during the weeks that ended March 15, 22, 29, and April 5, 2008, and a \$320.78 severance amount for the week that ended April 12, 2008. For the four weeks that ended March 15, 22, 29, and April 5, the apportioned severance pay exceeded Dr. Mathis' \$360.00 weekly benefit amount and, accordingly, reduced her eligibility for unemployment insurance benefits to zero. For the week that ended April 12, the apportioned severance pay reduced Dr. Mathis' benefit eligibility by \$320.78 before the apportioned vacation pay was factored in.

Had the employer provided Workforce Development with the correct severance pay amount of \$5,291.50 on the notice of claim, the per diem severance pay would have been calculated to be \$251.98 (\$5,291.50 divided by 21 days). The corrected weekly severance pay amount would

have been \$1,259.90 for the weeks that ended March 15, 22, 29, and April 5, 2008. The corrected one-day severance amount to be apportioned to the week ending April 12, 2008 would have been \$251.98. For the weeks that ended March 15, 22, 29, and April 5, the corrected severance pay amount would still have exceeded Dr. Mathis' \$360.00 weekly benefit amount and, accordingly, would have reduced her eligibility for unemployment insurance benefits to zero. For the week that ended April 12, the corrected severance pay amount would have reduced Dr. Mathis' benefit eligibility by \$251.98 before the apportioned vacation pay was factored in.

The Workforce Development representative also apportioned the vacation pay over the period designated by the employer. In apportioning the vacation pay, the Workforce Development representative utilized a standard five-day work week. Based on this formula, the Agency representative calculated a per diem vacation pay amount of \$230.77. Because the last day of severance pay had been apportioned to the week ending April 12, the Workforce Development representative apportioned only four days of vacation pay, or \$923.08, to that week. The Workforce Development representative apportioned five days of vacation pay, or \$1,153.85 for the week that ended April 19 and the week that will end April 26. This left two days of vacation pay, or \$461.54, to be apportioned to the week that ends on May 3.

The \$1,221.11 in wages Dr. Mathis received for work performed during the week that ended March 8, 2008, exceeded the weekly \$360.00 unemployment insurance benefit amount and reduced her eligibility for benefits for that week to zero. Thereafter, the apportioned severance and/or vacation pay amounts exceeded Dr. Mathis' \$360.00 weekly unemployment insurance benefit amount through the benefit week that will end May 3, 2008, and reduced Dr. Mathis' eligibility for benefits for those weeks to zero.

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

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 which 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).

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.

Workforce Development Rule 871 IAC 24.13(1) provides as follows:

*Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13 (3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments

made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13 (2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18 (96). The amount of any payment under subrule 24.13 (3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

[Emphasis added.]

The evidence in the record establishes that Dr. Mathis received severance pay or wages in lieu of notice in the amount of \$5,291.50. The employer made a timely designation of the period to which the severance pay should be applied vis-à-vis Dr. Mathis' eligibility for unemployment insurance benefits. The employer's timely designation of the period to which the severance pay should be applied controls. See 871 IAC 24.13(1). The Workforce Development representative apportioned the severance pay over the correct number of days and weeks, but did not have the correct severance pay amount from the employer. When the correct severance pay amount is apportioned over the period designated by the employer, the severance pay benefits exceed Dr. Mathis' \$360.00 weekly benefit amount during the weeks that ended March 15, 22, 29, and April 5, 2008. Accordingly, Dr. Mathis is not eligible for unemployment insurance benefits for the four-week period that ended April 5, 2008.

#### **DECISION:**

The Agency representative's April 4, 2008, reference 01, decision is affirmed. The claimant received severance pay or wages in lieu of notice. The employer made a timely designation of the period to which the severance pay should be applied. The Workforce Development representative apportioned the severance pay over the correct period. The corrected severance pay amount, when apportioned according to the law, exceeded the claimant's weekly unemployment insurance benefit amount for the weeks that ended March 15, 22, 29, and April 5, 2008. The claimant is not eligible for benefits for the four weeks that ended April 5, 2008.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw