

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BREENA N LEUSINK
Claimant

APPEAL NO. 09A-UI-06543-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMW GROSCHOPP INC
Employer

OC: 12/21/08
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Breena Leusink (claimant) appealed a representative's April 13, 2009 decision (reference 03) that concluded she was overpaid unemployment insurance benefits for the one-week period ending January 31, 2009, due to the receipt of severance pay from EMW Groschopp (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 26, 2009. The claimant participated personally. The employer participated by Julie Brunsting, Human Resources Assistant.

ISSUE:

The issue is whether the claimant received severance pay and, therefore, is not eligible to receive unemployment insurance benefits for the one-week period ending January 31, 2009.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from May 19, 2008, until January 16, 2009, as a full-time machining operator. When the claimant's employment ended the employer gave the claimant one-week of severance pay covering the week ending January 24, 2009.

The claimant filed her claim for unemployment insurance benefits with an effective date of December 21, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant received severance pay and is eligible to receive unemployment insurance benefits for the one-week period ending January 31, 2009.

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.

The claimant received severance pay for the one-week ending January 24, 2009, but not for the one-week period ending January 31, 2009. Under the provisions of the above Code section the claimant is not disqualified from receiving unemployment insurance benefits for the one-week period ending January 31, 2009.

DECISION:

The April 13, 2009, reference 03, decision is reversed. The claimant is not disqualified from receiving unemployment insurance benefits for the one-week period ending January 31, 2009.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs