

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT J SWISHER
3300 SE 4TH CT
DES MOINES IA 50315

SOUTHEAST POLK RURAL WATER DIST
6540 NE 12TH AVE
ALTOONA IA 50009

Appeal Number: 06A-UI-04800-SWT
OC: 04/09/06 R: 03
Claimant: Appellant (2-R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-5 - Severance Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 3, 2006, reference 02, that concluded he was ineligible to receive unemployment insurance benefits for the three weeks ending April 29, 2006, due to the receipt of severance pay. A telephone hearing was held on May 18, 2006. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from September 1, 2003, through April 3, 2006. In March 2006, the employer presented the claimant with a severance agreement and general release that stated generally that the employer had entered into an agreement to sell its assets

to the Des Moines Water Works, which if the sale was consummated would result in the claimant's job ending.

The agreement provided for a payment to the claimant of \$8,000.00 plus two weeks' wages for every year of employment, provided he remained employed until the employer closed or left employment to accept another job prior to the date of closing. The agreement also stated the payment was consideration for the claimant releasing all legal claims that he might have against the employer. The claimant signed the agreement on March 15, 2006, before the sale had About been finalized.

The employer closed effective April 3, 2006. At the time of his separation from employment, the claimant received severance pay of \$10,328.00, which consisted of the \$8,000.00 plus four weeks of wages pursuant to the agreement. He also received 55.75 hours or \$811.17 of vacation pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 9, 2006. The claimant did not report any vacation pay for the week ending April 15, 2006. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer reported that the claimant had been paid 55.75 hours or \$811.17 of vacation pay and \$8,000.00 plus four weeks of severance pay (\$10,328.00). The employer did not designate the dates to which the vacation or severance pay was to apply. The claimant's last day of work was April 3, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received severance pay deductible from his unemployment insurance benefits.

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay attributable to the same week. Iowa Code section 96.5-5-a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1).

The employer reported the payment as severance pay. The claimant testified that the entire amount should be considered "stay pay" provided as compensation for working until the employer closed. Neither the statute nor rule mentions "stay pay." Considering its purpose, however, it should be treated as a bonus based on services performed by the claimant before he applied for benefits, which is not deductible under the unemployment insurance rules. See 871 IAC 24.13(4)b (bonuses not deductible). Furthermore, the payment would not be considered severance pay because the agreement states the payment is "consideration for the release" signed by the claimant of all legal claims against the employer. The payment was contingent on the claimant signing a release of liability and would not have been paid without the release being signed.

Unused vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation

pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code section 96.5-7.

The claimant is eligible for benefits effective April 9, 2006. The issue of the proper deduction for unused vacation pay under Iowa Code section 96.5-7 is remanded to the Agency for a determination since the vacation pay issue was not included on the notice of hearing.

DECISION:

The unemployment insurance decision dated May 3, 2006, reference 02, is reversed. The claimant's unemployment insurance benefits should not be reduced because of the payment he received from the employer. The issue of the proper deduction for unused vacation pay under Iowa Code section 96.5-7 is remanded to the Agency for a determination.

saw/kkf