

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA L WILSON
Claimant

APPEAL NO. 08A-UI-06991-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUARANTY BANK & TRUST CO
Employer

**OC: 06/22/08 R: 03
Claimant: Appellant (1)**

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Lisa Wilson filed an appeal from a representative's decision dated July 23, 2008, reference 01, which held the claimant not eligible to receive unemployment insurance benefits for the two weeks ending July 5, 2008, because she had received disqualifying severance pay that equaled or exceeded her benefit amount. After due notice was issued, a consolidated telephone hearing was conducted on August 18, 2008, with Appeal No. 08A-UI-06992-NT. The claimant participated personally. The employer participated by Mary Hager. Exhibit D-1 was received into evidence.

ISSUE:

The issue in this matter is whether the claimant received disqualifying severance pay for the two weeks ending July 5, 2008.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant was separated on June 14, 2008, and received severance pay for 80 hours in the amount of \$960.00. The severance pay was included the claimant's most recent pay check and sent direct deposit to the claimant's bank. The claimant was unaware of the amount of severance pay that she would be receiving and thus incorrectly reported that amount for the weeks in question. The employer did not designate the period of time to which the severance pay was to be applied.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for the correct 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.

As the employer did not designate the period of time to which the severance pay was to be applied, the amount was prorated into two weeks based upon the claimant's hourly rate of pay and the 80 hours of severance pay that was subsequently issued to Ms. Wilson. The administrative law judge concludes that the amount of severance pay was correctly deducted for the two weeks ending July 5, 2008.

DECISION:

The representative's decision dated July 23, 2008, reference 01, is affirmed. The severance pay was deducted for the correct period.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw