

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUZANNE R BOUSQUET
Claimant

APPEAL NO. 08A-UI-10959-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MPCPRO LLC PAYROLL
Employer

**OC: 08/24/08 R: 01
Claimant: Appellant (4R)**

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated November 14, 2008, reference 01, that concluded claimant was in eligible for the six weeks ending October 18, 2008 for unemployment insurance benefits in the amount of \$1,084.00. A telephone hearing was scheduled and held on December 8, 2008 pursuant to due notice. Claimant did participate. Employer participated by Kira Barsotti, Human Resource Business Partner. Exhibit A was admitted into evidence.

ISSUE:

The issue is whether severance pay was deducted for the correct period and amount.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with employer was separated on August 20, 2008 and claimant received severance pay in the amount of \$2,450 based upon a rate of pay at \$15.00 per hour. Employer did designate the period of time to which the severance pay was to be applied. Employer designated \$4,200.00 in severance but was not able to pay the full amount. Claimant was denied benefits for the six weeks ending October 18, 2008.

Claimant's daily rate of pay is \$120.00. Claimant worked five-day work weeks. Claimant did not get paid wages for the partial week August 21, 2008 and August 22, 2008. Claimant received \$219.00 in vacation pay. The six weeks ending October 18, 2008 for overpayment of severance cannot be reconciled in this decision as the first two weeks were not included in the calculation. It seems that severance and vacation pay was also deducted for the two weeks ending September 6, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that severance pay was not 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.

Because employer did not designate a correct time period to which the severance pay is to apply, the entire amount was not correctly deducted from the six weeks of benefits following the separation.

Claimant received a total of \$2,669.00 in vacation and severance pay. For the week ending August 23, 2008 claimant would have a deduction of \$240.00 for two lost work days. For each of the next four weeks claimant has a deduction of \$600.00 per week ending with September 20, 2008. For the week ending September 27, 2008 claimant received \$69.00 in severance pay. This matter is remanded for re-calculation of the severance and vacation pay deduction and correction of the overpayment. It is remanded so that all pertinent weeks and the vacation pay can be reconciled.

DECISION:

The November 14, 2008, reference 01, decision is modified and remanded. The severance pay was not deducted for the correct period. This matter is remanded for recalculation of the severance pay and vacation pay deduction and overpayment.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs