

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICK E PARENT**  
Claimant

**APPEAL NO. 07A-UI-01629-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNTRY PARTNERS INC**  
Employer

**OC: 01/14/07 R: 02**  
**Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

Nick E. Parent (claimant) appealed a representative's February 9, 2007 decision (reference 04) that concluded he was not qualified to receive full unemployment insurance benefits for the week ending January 20, 2007, due to the receipt of severance pay from Country Partners, Inc. (employer), and therefore was partially overpaid benefits for that week. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 1, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant receive severance pay and was it properly allocated and deducted?

**FINDINGS OF FACT:**

The claimant started working for the employer in the spring of 2006. As of approximately mid-September 2006 he worked full time, about 12 days per bimonthly pay period, as assistant manager at one of the employer's hog farrowing sites. His last day of work was December 23, 2006. He was laid off for lack of work as of that date. He was told at that time that he would be paid through January 15, 2007.

As assistant manager, the claimant was paid \$1,454.16 gross bimonthly on the 15th and 30th of each month, for work performed through the pay date. On December 27 the claimant met with the employer and was presented with a form the employer asked him to sign before receiving his paycheck and severance pay. The form indicated that the claimant was voluntarily quitting. The claimant declined to sign the form as was, but did sign the form after adding a notation that he was only signing the form so that he could receive his pay. The employer was not pleased with the added notation, but did present the claimant with his paycheck for the pay period for the end of the month of December; the gross amount of the check was \$1,454.16.

The employer asserted to the claimant on December 23, 2006 that he would be mailed a paycheck for severance pay through January 15, 2007. However, the claimant never received any further paychecks, and then established a claim for unemployment insurance benefits during the week that began on Sunday, January 14, 2007. His weekly benefit amount was calculated to be \$334.00, and he was paid that amount in benefits for the week ending January 20, 2007. A notice of the claim was sent to the employer on January 18, and the employer filed a timely response indicating that it had paid the claimant severance through January 15. As a result, in the issuance of the representative's decision the representative allocated \$136.00 of the alleged severance payment to the week ending January 20, resulting in a conclusion that this amount of unemployment insurance benefits had been overpaid to the claimant. However, no further paycheck for severance pay through January 15 was sent to the claimant even after he filed his claim, at least as of the date of the hearing.

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

If severance pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

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.

Here, while the claimant was promised severance pay through January 15, 2007, the only severance payment actually made to the claimant was through the end of December 2006. As no further severance payment was made, it cannot be allocated against the claimant's unemployment insurance eligibility for his claim established effective January 14, 2007. Benefits are allowed without any offset for severance pay as of January 14, 2007, if the claimant is otherwise eligible.

**DECISION:**

The representative's February 9, 2007 decision (reference 04) is reversed. The claimant was eligible for unemployment insurance benefits for the week ending January 20, 2007, without any offset due to the receipt of severance pay, and therefore was not overpaid benefits for that week.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw