

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY WILSON
Claimant

APPEAL 20A-UI-00734-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 12/15/19
Claimant: Appellant (1R)**

Iowa Code § 96.5(5) – Severance Pay
Iowa Code § 96.5(7) – Wages
Iowa Admin. Code r. 871—24.13(1)- Deductible and Non-deductible Payments
Iowa Admin. Code r. 871—24.18 – Wage Earnings Limitation
Iowa Admin. Code r. 871-24.13(3)c – Severance Pay

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 16, 2020 (reference 05) unemployment insurance decision that found claimant was not eligible for unemployment benefits for the four-week period ending January 11, 2020 because she was entitled to receive vacation pay, paid time off, holiday pay, severance pay, or separation pay, which was considered to be wages. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2020. The claimant, Ashley Wilson, participated personally. The employer, Hillcrest Family Services, participated through witness Daniel Nettie. This case was consolidated for hearing with Appeal 20A-UI-00735-DB-T. The administrative law judge took administrative notice of the claimant’s unemployment insurance benefits records including the fact-finding documents.

ISSUE:

Did the claimant receive wages and severance pay and if so, was it correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed for this employer from August 12, 2019 until December 20, 2019. She earned an annual salary of \$87,000.00. She is permanently separated from employment at this time.

Claimant filed a claim for unemployment insurance benefits with an effective date of December 15, 2019. Her weekly benefit amount is \$518.00. Claimant’s base period consists of four quarters that include the third quarter of 2018 through the second quarter of 2019. Wages reported in each of those four quarters are as follows:

	2018/3	2018/4	2019/1	2019/2
St Luke’s/Jones Regional	\$10,743	\$13,478	\$12,020	\$13,463

The highest wages reported in her base period is the fourth quarter of 2018, which shows that she was paid \$13,478.00 during that quarter. Her average weekly wage from that quarter is therefore \$1,036.77 (\$13,478.00 divided by 13 weeks).

For the benefit week beginning December 15, 2020 through December 21, 2020, claimant earned wages of \$1,673.00 and worked this entire week. After separating from employment on December 20, 2019, claimant earned severance pay of \$3,346.00. She was not required to sign any waiver or agreement in order to receive severance pay.

Claimant is currently labeled in Group Code "3", temporary layoff for unemployment insurance benefits purposes. Her separation from employment is not temporary. The matter of whether the claimant is properly listed in Group Code "3" and whether she is required to make employer contacts shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, **severance pay**, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. 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", subparagraph (1), (2), or (3), 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.

(emphasis added).

Iowa Admin. Code r. 871—24.13(1) provides:

Deductible and nondeductible payments.

(1) Procedures for deducting payments from benefits. Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures **until the amount is exhausted**; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim response, the amount of the payment and the period to which the amount applies. **If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative shall determine days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period.** The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a **dollar-for-dollar basis**.

(emphasis added).

Iowa Admin. Code r. 871-24.13(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.

(emphasis added).

Iowa Admin. Code r. 871—24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. It has traditionally excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. Because there was no agreement required wherein the claimant relinquished her right to file any further grievances against the employer regarding her severance pay, it is therefore deductible on a dollar-for-dollar basis from her unemployment insurance benefits under Iowa Code section 96.5(5).

Because claimant earned wages of \$1,673.00 for the benefit week of December 15, 2020 through December 21, 2020, and this amount of wages is more than her weekly-benefit amount, plus \$15.00, she is not eligible for benefits for that one-week period. See Iowa Admin. Code r. 871—24.18.

Further, the claimant earned severance pay of \$3,346.00 when she separated from employment. Her severance pay is deductible from her unemployment insurance benefits on a dollar-for-dollar basis pursuant to Iowa Admin. Code r. 871-24.13(3)c, because she was not required to sign a severance agreement.

Pursuant to Iowa Admin. Code r. 871—24.13(1), the unemployment insurance representative shall determine days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. Claimant's average weekly wage from her high quarter is \$1,036.77. Claimant's amount of severance pay of \$3,346.00 equals 3.23 weeks in which severance pay is applied, ((\$3,346.00 divided by \$1,036.77),(rounded up to \$1,037)). Because \$1,037.00 is above and beyond her weekly-benefit amount of \$518.00 for each of the three weeks beginning December 22, 2019 and ending January 11, 2020, the claimant is not entitled to any unemployment insurance benefits payment for those three weeks as well.

As such, benefits are denied for four weeks from December 15, 2019 through January 11, 2020 due to claimant's receipt of wages from December 15, 2019 through December 21, 2019 and severance pay from December 22, 2019 through January 11, 2020, which are deductible from her weekly benefit amount.

DECISION:

The January 16, 2020 (reference 05) unemployment insurance decision is affirmed. The claimant is not eligible for benefits for four weeks beginning December 15, 2019 and ending January 11, 2020 due to the receipt of wages and severance pay.

REMAND:

The issue of whether the claimant is properly included in Group Code "3" as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs