

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BELINDA YUSKA
Claimant

APPEAL NO: 14A-UI-08885-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETING MANAGEMENT INC
Employer

OC: 05/18/14
Claimant: Appellant (1)

Section 96 5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 21, 2014, reference 02, decision that determined her severance pay was incorrectly deducted from her benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 16, 2004. The claimant participated in the hearing. Patricia Abbey, Vice-President of Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant's severance pay was correctly deducted.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed with Marketing Management through May 2, 2014, when she received severance pay \$1,634.00 in lieu of salary. She was paid her normal salary through May 2, 2014. The employer did designate the period of time to which the severance pay was to be applied as 80 hours but intended the claimant's severance pay received to be deducted from her first week of benefits.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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.

While the employer intended the claimant's vacation and severance pay to be deducted during the first five working days following her last day of employment, and that is allowed with vacation pay, severance pay differs from vacation pay in that it is fully deductible when declared by the employer on the Notice of Claim and the employer's intentions regarding the severance payment are not considered. The number of days or hours listed by the employer, unless misstated by the employer, stands as the total amount of severance pay and must be fully deducted from benefits. Therefore, the administrative law judge has no choice but to find the claimant's severance pay shall be deducted for the two weeks ending June 7, 2014, following the deduction of her vacation pay the week ending May 24, 2014.

DECISION:

The August 21, 2014, reference 02, decision is affirmed. The severance pay was deducted for the correct period. The claimant's severance pay shall be deducted for the two weeks ending June 7, 2014.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css