

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**BRITTANY A HOLMES**  
N/K/A  
**BRITTANY A GEREIN**  
Claimant

**CEDAR VALLEY MEDICAL**  
Employer

**APPEAL 16A-UI-08192-H2T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/20/16**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 25, 2016, (reference 02) unemployment insurance decision that deducted vacation pay from her unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2016. Claimant participated along with her husband Brad Gerein. Claimant is now known as Brittany A Gerein. Employer participated through Connie Hix, Human Resources Manager. Department's Exhibit D-1 was entered and received into the record. Employer's Exhibit One was entered and received into the record. Official notice was taken of agency records.

**ISSUES:**

Did the claimant file a timely appeal?

Was the severance pay deducted for the correct period?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment on March 24, 2016. Thereafter, she received both severance pay and vacation pay. When the employer filed their notice of protest, they specifically indicated that claimant was separated on March 24 and would be paid for 80 hours or two weeks of severance pay for the period from March 25 through April 7.

The claimant does not recall receiving the inquiry letter from the agency dated April 14 nor the eventual decision on April 25. She filed her appeal on July 27 after she received the overpayment letter from the agency.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant first learned of the issue when she received the overpayment decision. Therefore, the appeal shall be accepted as timely.

The claimant's severance pay was correctly deducted through the week ending April 9, 2016.

Iowa Code § 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.

The employer designated the claimant to receive severance for: March 25, 28, 29, 20, 31 and April 1, 4, 5, and 7 for ten total days or a two-week working period. Because the employer did designate a time period to which the severance pay was to apply the severance pay should have been deducted from the claimant's unemployment insurance benefits through the week ending April 9, 2016.

**DECISION:**

The April 25, 2016, (reference 02), decision is affirmed. The claimant filed a timely appeal. The severance pay was deducted correctly through the week ending April 9, 2016.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/pjs