

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L KARAIDOS
Claimant

APPEAL NO. 09A-UI-08956-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIGOTT INC
Employer

OC: 02/15/09
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated June 12, 2009, reference 01, that concluded claimant was ineligible for the three weeks ending March 7, 2009 for unemployment insurance benefits in the amount of \$629.00. A telephone hearing was scheduled and held on July 8, 2009 pursuant to due notice. Claimant did participate. Employer participated by Tina Mutchler, Controller. Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the appeal is timely and whether claimant was overpaid due to the receipt of severance pay.

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 February 5, 2009 and claimant received severance pay in the amount of \$2,067.00 based upon a rate of pay at \$12.92 per hour. Employer did designate the period of time to which the severance pay was to be applied. Claimant also received three days of vacation pay for a total of \$310.00. Claimant was forced to sign a legal release in order to receive the severance pay. Claimant gave up his right to sue the employer in consideration for receipt of the four weeks' severance pay. Claimant delayed filing this claim for benefits by one week.

Claimant filed his appeal June 19, 2009. The local Claims representative did not note the date on the appeal form.

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 required a general release from claimant the entire amount was correctly deducted from the three weeks of benefits following the separation. This is not severance pay but a buyout of claimant's legal rights. The three days of vacation do not disqualify claimant as claimant delayed filing for unemployment by a week.

Claimant's appeal is timely as it was delivered to a local office before the appeal expiration date.

Iowa Code section 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.

DECISION:

The June 12, 2009, reference 01, decision is reversed. The severance pay was not deducted for the correct period. No severance pay is deductible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css