

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK E POLZIN
Claimant

OMG MIDWEST INC
Employer

APPEAL 17A-UI-01154-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/14/16
Claimant: Appellant (1)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 25, 2017, (reference 02) unemployment insurance decision that deducted severance benefits based upon deduction of severance pay from benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2017. Claimant participated. Employer participated through human resources generalist Courtney Maxwell.

ISSUE:

Did the claimant receive 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 temporarily laid off due to a lack of work on December 6, 2016. He earned \$359.00 in gross wages that week. He was permanently separated on December 14, 2017, when the employer sold the business. He waited until the week of December 11, 2016, to file his additional claim on the February 14, 2016, claim year. During the week-ending December 31, 2016, he received \$1,400.00 in severance pay, which is equivalent to two weeks' pay. He was not required to waive his rights in order to receive the severance pay. He reported vacation pay of \$858.00 during the week-ending December 31, 2016. He did not receive vacation pay. A notice was mailed to claimant on January 13, 2017, asking him to respond to the employer's report of severance pay for the two weeks-ending December 17, 2016. He did not respond by January 24, 2017, so based upon the employer's information, IWD issued a credit for the week-ending December 31, 2017, and decisions deducting severance pay for the week-ending December 17, 2016, and finding him overpaid gross benefits of \$431.00 for the same week. The overpayment for the week-ending December 17, 2016, was offset by the special payment on January 24, 2017.

12/17/16 CLEAR	.00	12/23/16 5 PAID-D	431.00
12/24/16 CLEAR	.00	12/27/16 2 PAID-D	431.00
12/31/16 VACATION	858.00	01/03/17 2 PAID-W	.00
SPECIAL UPAY-EARN	431.00	01/24/17 2 OFFSET	431.00

01/07/17 CLEAR	.00	01/09/17 2 PAID-D	431.00
01/14/17 CLEAR	.00	01/17/17 2 PAID-D	431.00
01/21/17 CLEAR	.00	01/23/17 2 PAID-D	431.00
01/28/17 CLEAR	.00	01/30/17 2 PAID-D	431.00
02/04/17 CLEAR	.00	02/06/17 2 PAID-D	431.00
02/11/17 CLEAR	.00	02/13/17 2 PAID-D	431.00
02/18/17 CLEAR	.00	00/00/00 APPROVED	.00
02/25/17 CLEAR	.00	00/00/00 APPROVED	.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was correctly deducted from benefits.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

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, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, 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.

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.

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.

The severance pay calculation was accurate and the amount was correctly deducted.

DECISION:

The January 25, 2017, (reference 02) unemployment insurance decision is affirmed. The severance pay was correctly deducted.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs