

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA E ESSEX
Claimant

APPEAL NO. 07A-UI-11173-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

I-DIGITAL INC
I-DEMAND
Employer

OC: 10/28/07 R: 04
Claimant: Appellant (1)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 29, 2007, reference 03, decision that deducted severance pay from benefits without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a telephone conference hearing was held on December 18, 2007. Claimant participated. Employer participated through Connie Hulett.

ISSUE:

The issue is whether claimant received severance pay at separation, if that amount is deductible from benefits, and if so, for what period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from her full time employment on October 29, 2007, and received vacation pay in the amount of \$373.00, equivalent to 29.84 hours, based upon a rate of pay at \$12.50 per hour. The employer erroneously designated the amount of vacation pay as \$873.00 since claimant used 40 hours of that amount the last week of the employment. Thus the time period to which the vacation pay was to be applied was also erroneous. She was also paid \$1,625.00 (equivalent to 130 hours or 3.25 weeks) in severance pay based upon years of service.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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.

871 IAC 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.

Ten hours' severance pay was correctly deducted with the 30 hours' vacation pay for the first week following the separation. The remaining three weeks' severance pay was appropriately calculated to end November 24, 2007.

DECISION:

The November 29, 2007, reference 03, decision is affirmed. The remaining three weeks' severance pay was correctly deducted from the three week period ending November 24, 2007. The additional ten hours' severance pay was correctly included with the 30 hours of vacation pay deducted in the first week following the separation.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs