

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRED A DIETZ

Claimant

APPEAL NO. 14A-UI-03149-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA POWER COOP

Employer

OC: 12/29/13

Claimant: Appellant (1)

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Fred Dietz filed a timely appeal from the March 14, 2014, reference 03, decision that denied benefits for the 33-week period ending August 23, 2014, based on an agency conclusion that he had received severance pay that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on April 16, 2014. Mr. Dietz participated. Vicki Vargason represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-03150-JTT. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

Whether Workforce Development correctly deducted the severance pay from the claimant's benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Fred Dietz separated from his full-time employment with Central Iowa Power Company effective December 27, 2013. That was the last day he performed work in the employment. During the week that he separated from the employment, he worked 28 hours. The employer paid him \$995.96 in wages for the work performed during that week that ended December 28, 2013. The employer also paid Mr. Dietz \$426.84 for 12 hours of holiday pay during the week that ended December 28, 2013.

At the time Mr. Dietz separated from the employment, he had accrued, but not yet used, 322.15 hours of vacation pay. The gross value of the unused vacation pay was \$11,458.88. The employer paid that amount to Mr. Dietz.

In connection with the separation, the employer paid Mr. Dietz \$46,952.40 for 33-weeks of severance pay. Mr. Dietz did not have to waive any rights in order to get the severance pay. Instead there was a provision for severance pay in the collective bargaining agreement, one week of severance pay for each year of service to the employer.

Mr. Dietz established a claim for unemployment insurance benefits that was effective December 29, 2013. Workforce Development calculated Mr. Dietz's weekly benefit amount at \$408.00. During the first week of the claim, the week ending January 4, 2014, Mr. Dietz reported the entire vacation pay amount and received no unemployment insurance benefits. For the nine-week period from January 5, 2014, through March 8, 2014, Mr. Dietz reported zero wages and Iowa Workforce Development paid Mr. Dietz \$408.00 in weekly benefits. The total amount of the benefits paid to Mr. Dietz for that period was \$3,672.00.

On January 2, 2014, Iowa Workforce Development mailed a notice of claim concerning Mr. Dietz to Central Iowa Power Coop. The notice of claim indicated that the employer's response to the notice of claim had to be postmarked by January 13, 2014 or received by Workforce Development by that date. The employer received the notice of claim in a timely manner, prior to the deadline for the employer's response. The employer did not complete its information on the notice of claim form or submit the completed form until January 15, 2014, two days after the due date. The employer indicated on the notice of claim that it was not protesting the claim. The employer provided information on the form concerning wages, holiday pay, vacation pay, and severance. Aside from the information concerning the holiday pay, the employer did not designate the start date or the end date to which the amounts were to be applied when determining Mr. Dietz's unemployment insurance benefit eligibility.

A Workforce Development representative took the information provided by the employer and used that information to redetermine Mr. Dietz's eligibility for unemployment insurance benefits. The Workforce Development representative apportioned the entire vacation pay amount (\$11,458.88) to the benefit week that ended January 4, 2014. The Workforce Development representative apportioned equal amounts of severance pay (\$1,422.80) to the 33 weeks between January 5, 2014 and March 29, 2014 and August 23, 2014. Based on the application of the vacation pay and the severance pay, the representative concluded that Mr. Dietz was not eligible for benefits for the period of December 29, 2013 through August 23, 2014. Because Mr. Dietz had received \$3,672.00 in benefits for the nine weeks between January 5, 2014 and March 8, 2014, the representative concluded that those benefits constituted an overpayment.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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.

Based on the employer's late filing of the protest/notice of claim, the Workforce Development representative correctly apportioned the entire vacation pay amount to the benefit week that ended January 4, 2014. See Iowa Code section 96.5(7). See also 871 IAC 24.13(1), above.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a lay off. The Appeals Section has historically excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. The severance pay that the employer disbursed to Mr. Dietz was true severance pay within the meaning of the law, rather than a legal settlement, and was deductible from his unemployment insurance benefits.

Though Iowa Code section 96.5(7) provides a 10-day deadline for the employer to report vacation pay to avoid having all of the vacation pay apportioned to a single week of the claimant, Iowa Code section 9.5(5) provides no similar deadline for severance pay information. All parties understood that the severance pay was the equivalent of 33 weeks of wages. The Workforce Development representative appropriately apportioned the 33 weeks of severance pay to the 33 weeks of the claim that followed the week of the claim during which the vacation pay was applied. Mr. Dietz's severance amount was deductible from his benefit eligibility during the period of January 5, 2014 through August 23, 2014. Because the apportioned amounts of severance pay exceeded his weekly unemployment insurance benefit amount, Mr. Dietz was and is not eligible for unemployment insurance benefits during the period of January 5, 2014 through August 23, 2014.

DECISION:

The claims deputy's March 14, 2014, reference 03, decision is affirmed. The claimant was not eligible for benefits for the 33-week period of January 5, 2014 through August 23, 2014, because he received severance pay that was deductible from his unemployment insurance benefits during that period and the apportioned severance pay exceeded his weekly benefit amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs