

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN M PERFECT BRINKMAN
Claimant

APPEAL NO: 07A-UI-09653-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POTTAWATTAMIE COUNTY
Employer

**OC: 09/09/07 R: 01
Claimant: Appellant (5)**

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 2, 2007, reference 02, decision that deducted severance pay from benefits. After due notice was issued, a telephone conference hearing was held on October 30, 2007. Claimant participated. Employer participated through Mary Davis.

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 on September 17, 2007, and received vacation pay in the amount of \$2,846.98, equivalent to 166.5 hours, based upon a rate of pay at \$17.10 per hour. She was suspended for the week prior to her separation. The employer did designate the period of time to which the vacation pay was to be applied but was later backdated to cover the suspension period. Ultimately she was paid vacation pay from September 10 through October 6, 2007. She then received severance pay from October 7 through October 31, 2007. Claimant started a new job and will be paid beginning November 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes severance pay shall be deducted from October 7 through 31, 2007.

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.

Claimant's receipt of a combination of vacation and severance pay through October 31, 2007 renders her ineligible for benefits for that time. Since she will start employment as of November 1, she remains ineligible for benefits. Therefore, severance pay shall be deducted from the cessation of vacation pay through October 31, however her ineligibility continues since she will start work on November 1, 2007.

DECISION:

The October 2, 2007, reference 02, decision is modified without change in effect. The severance pay shall be deducted for the period from October 7 through October 31, 2007 and claimant remains ineligible for benefits thereafter due to beginning work November 1, 2007.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs