

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMY L PATTERSON
Claimant

APPEAL NO. 08A-UI-03523-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMAHA COLD STORAGE TERMINALS INC
Employer

OC: 03/09/08 R: 01
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay Deductible from Benefits

STATEMENT OF THE CASE:

Jimmy L. Patterson (claimant) appealed a representative's April 7, 2008 decision (reference 02) that concluded he was not eligible to receive benefits until the week of April 5, 2008, because Omaha Cold Storage Terminals, Inc. (employer) paid him severance pay that was attributed to the weeks prior to April 5, 2008. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2008. The claimant participated in the hearing. Patrick Burke, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive a severance or bonus payment and to what weeks should a deductible payment be attributed?

FINDINGS OF FACT:

The claimant worked for the employer until March 10, 2008. When his employment ended, the claimant earned an annual salary of \$68,500.00. At the time of his separation, the employer paid the claimant his unused vacation time that totaled \$3,031.84.

The employer and claimant entered into a settlement agreement on March 21, 2008. At that time the employer paid the claimant the bonus he had earned in late 2007. The employer also agreed to pay the claimant the bonus he probably would have earned in January and February 2008. In accordance with the claimant's employment contract, the employer was not legally obligated to pay his bonus for months when he was not employed at the time the bonus was paid out. In accordance with the March 21 settlement agreement, the employer paid the claimant \$8,275.63 for bonuses he earned in late 2007 and the bonus he would have earned in January and February 2008.

The claimant established a claim for benefits during the week of March 9, 2008. He filed claims immediately.

REASONING AND CONCLUSIONS OF LAW:

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay attributable to the same week. If the amount of severance pay applied to a week is less than the weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the severance pay applied to the week. Iowa Code § 96.5-5-a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar days after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1). Severance pay if properly reported is considered a wage replacement, which reduces the amount of unemployment insurance benefits payable.

A bonus payment is only nondeductible when based on service performed by the claimant before the period in which the claimant also claims benefits. 871 IAC 24.13(4). In this case the claimant earned his bonus payment before he filed his unemployment insurance claim. Even though the employer was not legally obligated to pay the claimant the bonus he earned for January and February 2008 because he would not be an employee when this bonus would typically be paid, in the March 21, 2008 settlement agreement the employer agreed to make this payment to the claimant in addition to the bonus he earned in late 2007. As a result, the \$8,275.63 payment is not deductible, because it is a bonus payment and not a severance payment. Based on the decision for appeal 08A-UI-03524-DWT, the claimant is eligible to receive benefits as of March 16, 2008.

DECISION:

The representative's April 7, 2008 decision (reference 02) is reversed. The claimant did not receive a deductible severance payment. He received a bonus payment that is not deductible for unemployment insurance purposes. As of March 16, 2008, the claimant is eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css