

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK A FERGUSON
Claimant

ACT INC

APPEAL 14A-UI-13147-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14
Claimant: Appellant (2)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 17, 2014, (reference 03) unemployment insurance decision that deducted severance pay from benefits for the two weeks ending November 8, 2014. After due notice was issued, a telephone conference hearing was held on January 20, 2015. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

ISSUES:

Did the claimant receive severance pay at separation?
Is that amount 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 November 3, 2014, and his last day of work was Thursday, October 23, 2014. Claimant's weekly benefit amount (WBA) is \$416.00. He received pay for accumulated but unused vacation time/paid time off (PTO) in the amount of \$2,747.33, equivalent to 69 hours or nine days, based upon an approximate rate of pay at \$39.82 per hour. The employer's agent Equifax did designate the period of time to which the vacation pay was to be applied but that calculation was erroneous. The employer's agent incorrectly calculated the vacation pay as applying to benefit dates from November 4 to November 14. That period ran from October 24 through November 5, 2014. Since the vacation pay for those three days during the week ending November 8, 2014, was \$305.26, he was not eligible for benefits that week. His eligibility is effective November 9, 2014.

He signed a separation and release agreement fully releasing employer from all claims in consideration of separation pay for the equivalent of four week's wages in the amount of \$5,929.72.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not receive severance pay.

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.

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.

Iowa Admin. Code r. 871-24.13(4)b provides:

(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted “severance pay” to include a 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 greater weight of the evidence in the record indicates that the settlement amount at issue in this case arose out an attempt by the employer to resolve legal matters, or potential legal matters, between itself and the claimant. Under the Agency’s historic interpretation of “severance pay,” the settlement amount issued to the claimant would fall outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code § 96.5(5). Since claimant is expected to agree to the terms of the release agreement, payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant, but was for a contractual obligation. Payment in consideration of that obligation is not considered wages. Therefore, the release agreement consideration should not be deducted from benefits and the entire amount of “severance” pay was incorrectly defined and deducted. Benefits are allowed effective November 9, 2014.

DECISION:

The December 17, 2014, (reference 03) decision is reversed. The claimant did not receive severance pay and the contract consideration was incorrectly defined and deducted.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs