

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK K WERLING
Claimant

REXCO EQUIPMENT INC
Employer

APPEAL 16A-UI-11156-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/14/16
Claimant: Appellant (2)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 5, 2016, (reference 04) decision that deducted severance pay from benefits for the week-ending September 3, 2016.. After due notice was issued, a telephone conference hearing was scheduled to be held on October 31, 2016. Claimant responded to the hearing notice instructions but no hearing was held as there was sufficient evidence in the appeal letter and accompanying documents to resolve the matter without testimony.

ISSUE:

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on August 1, 2016, and did not receive severance pay in the amount of \$5760.00. That figure represents payment for additional training services rendered during June and July 2016.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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(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 Bureau 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. It has traditionally 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. Similarly, severance pay does not include stay pay or other payment for services rendered. 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 pay claimant for additional services rendered while an employee. Thus, the 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 section 96.5(5). Therefore, the payment should not be deducted from benefits and the entire amount of "severance" pay was incorrectly defined and deducted. Benefits are allowed for the week-ending September 3, 2016.

DECISION:

The October 5, 2016, (reference 04) unemployment insurance decision is reversed. The claimant did not receive severance pay. No benefits shall be withheld on that basis.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs