

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALMA L BRUEGGEMAN
Claimant

APPEAL NO. 08A-UI-05186-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE IOWA CLINIC PC
Employer

**OC: 04-20-08 R: 02
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal
Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 7, 2008, reference 05, decision that deducted severance pay from her unemployment insurance benefits. After due notice was issued, a hearing was held on June 18, 2008. The claimant did participate. The employer did participate through Marian Klein, Employment Coordinator. Department's Exhibit D-1 was received. Department's Exhibit D-2 was received.

ISSUE:

Did the claimant file a timely appeal?

Was the severance pay deducted for the correct period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on May 7, 2008. The claimant did receive the decision. The claimant's appeal was due by May 17, 2008. The claimant faxed in her appeal information to the wrong fax number at Iowa Workforce Development on May 13, 2008. The information was not routed to the appeals section as it should have been. The claimant resent her appeal information on June 2, 2008.

The claimant was separated on March 31, 2008, and received severance pay in the amount of \$1,836.48 based upon a rate of pay at \$12.00 per hour. The employer did designate the period of time to which the severance pay was to be applied as from April 1 through April 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did appeal the fact-finding decision but the appeal was faxed to the wrong number. The appeal was not routed to the appeals section in a timely manner. The claimant did attempt to appeal in a timely manner, thus her appeal shall be accepted as timely. See Smith v. Iowa Employment Security Commission, 212 N.W.2d 471, 472 (Iowa 1973).

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for the correct period.

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 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.

The employer did designate the time period to which the severance pay was to be deducted. The severance pay was correctly deducted from the four-week period ending April 26, 2008.

DECISION:

The May 7, 2008, reference 05, decision is affirmed. The claimant's appeal is timely. The severance pay was deducted for the correct period.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw