

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE MILLER
Claimant

APPEAL NO: 14A-UI-11353-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLB OF IOWA LC
Employer

OC: 10/05/14
Claimant: Appellant (1)

Section 96 5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 28, 2014, reference 02, decision that determined her severance pay was incorrectly deducted from her benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2014. The claimant participated in the hearing. Karen Beard, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant's severance pay was correctly deducted.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed with SLB of Iowa through October 1, 2014, and she received severance pay in the amount of \$2,923.00 in lieu of salary. Her salary was \$18.27 per hour. It was based upon a weekly salary of \$731.00. She was paid her normal salary through October 3, 2014. The claimant filed a new claim for unemployment insurance benefits with an effective date of October 5, 2014. The employer did designate the period of time to which the severance pay was to be applied as October 6 through October 31, 2014, and responded to the notice of claim within ten calendar days of the date that it was mailed to the employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Under the employment insurance law, a person is disqualified from receiving unemployment insurance benefits for any week in which she claims unemployment insurance benefits and has severance pay or vacation pay of over her weekly benefit amount attributable to the same week. Iowa Code section 96.5-5-a and 96.5-7. Employers are permitted to designate the period to which the severance pay or vacation 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). The rules provide that if vacation pay is paid in conjunction with some other deductible payment, the vacation pay is deducted first unless the employer has designated otherwise. 871 IAC 26.13(1).

In this case the claimant received severance pay and the employer timely reported the amount and designated the period to which the amount applied.

Under the rule, \$292.00 was applied to the week ending October 4, 2014, because the claimant worked a partial week; \$731.00 was applied to the weeks ending October 11, 18 and 25, 2014, and the remaining \$439.00 was applied to the week ending November 1, 2014, for a total of \$2,924.00.

DECISION:

The October 28, 2014, reference 02, decision is affirmed. The severance pay was deducted for the correct period. The claimant was paid severance pay through the week ending November 1, 2014.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs