

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J MARLOW
Claimant

APPEAL NO: 09A-UI-07241-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY NATIONAL BANK
Employer

OC: 1/04 /09
Claimant: Appellant (4)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Michael J. Marlow (claimant) appealed a representative's May 4, 2009 decision (reference 02) that concluded he was not eligible to receive benefits until February 22, 2009, because he received severance pay that should be attributed to the weeks ending January 17 through February 21, 2009. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2009. The claimant participated in the hearing. Prior to the hearing, the employer informed the Appeals Section in a May 15 letter the employer would not be participating on June 4, 2009. The employer's letter was read into the record. 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:

What period of time should the severance pay be attributed?

FINDINGS OF FACT:

The claimant's last day of work for the employer was January 6, 2009. The claimant established a claim for benefits during the week of January 4, 2009. The employer paid the claimant one week of vacation pay, \$964.08, and a lump sum severance payment of \$5,326.97 in a check issued on January 15, 2009.

The computer records indicate the claimant did not file a weekly claim until the week ending January 31, 2009.

REASONING AND CONCLUSIONS OF LAW:

Severance pay attributed to a specific time period reduces the amount of a claimant's maximum weekly benefits the claimant is entitled to receive. Iowa Code section 96.5-5. Vacation pay is deducted before severance pay. 871 IAC 24.13(1). If neither the claimant nor the employer designates the period to which a severance payment applies, the Department determines the period of time the severance payment applies in accordance with this regulation. 871 IAC 24.13(1).

Since the claimant established a claim for benefits during the week of January 4, 2009, but did not file any weekly claims until the week ending January 31, he has effectively designated the severance payment he received should be designated to the weeks ending January 17 and 24, 2009. The employer did not designate any time period the severance payment should be applied. The Department only has the authority to designate the time period a severance payment applies when neither the claimant nor the employer designates the days the severance payment should be applied. Since the claimant made a designation by not filing weekly claims for the weeks ending January 17 and 24, this is the time period the severance payment must be applied and not any subsequent week.

DECISION:

The representative's May 4, 2009 decision (reference 02) is modified in the claimant's favor. The severance pay the claimant received from the employer must be attributed to only the weeks ending January 17 and 24, 2009. This means as of January 25, 2009, the claimant is eligible to receive benefits and no severance payment shall be attributed to any time after January 24, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs