

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T DODGE

Claimant

APPEAL NO. 09A-UI-14701-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

STORK TOWNSEND INC

Employer

OC: 03/29/09

Claimant: Appellant (2)

Section 96.5-5-a – Severance Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated September 29, 2009, reference 01, that disqualified him for the four weeks ending May 2, 2009 due to receiving severance pay. A telephone hearing was held on October 21, 2009. The claimant participated. Chris McGuire, HR Manager, participated for the employer. Employer Exhibit One and Claimant Exhibit A was received.

ISSUE:

The issue is whether the claimant received four weeks of severance pay.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant was separated from employment effective April 3, 2009. In order to receive four weeks of severance pay, the claimant entered into a Severance Agreement & Release of All Claims on April 6, 2009. The agreement contains a release/waiver of any and all claims clause by the claimant to the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes that the claimant did not receive any disqualifying separation pay from the employer due to the waiver of all claims clause in the Separation Agreement.

The employer requirement that claimant waive all claims and release it from liability means that the separation pay is not just for severance, but consideration for a liability waiver that is not disqualifying pay.

DECISION:

The decision of the representative dated September 29, 2009, reference 01, is reversed. The claimant did not receive disqualifying severance pay, and no disqualification period is imposed for the four weeks ending May 2, 2009. The claimant is entitled to benefits, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css