

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN A TAYLOR
Claimant

OMG MIDWEST INC
Employer

APPEAL 17A-UI-01089-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/22/16
Claimant: Appellant (1)**

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 25, 2017, (reference 07) unemployment insurance decision that deducted severance pay from benefits. After due notice was issued, a telephone conference hearing was held on February 20, 2017. Claimant participated and testified. Employer participated through Human Resource Generalist Courtney Maxwell. Claimant's Exhibit A was received into evidence.

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 December 14, 2016. The last day of work was December 10, 2016, though claimant was issued bereavement pay for December 12 and 13, 2016. The employer paid him severance pay in the amount of \$1,400.00. There was no requirement that he sign an agreement waiving certain rights to receive the pay. Claimant reported these wages during the week he received them, the week beginning December 18, 2016. He received pay for accumulated but unused vacation time in the amount of \$323.40, equivalent to 16.17 hours, based upon a rate of pay at \$20.00 per hour. The employer did not designate the period of time to which the vacation pay was to be applied. Claimant's weekly benefit amount (WBA) is \$377.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was correctly deducted from benefits.

Iowa Code § 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 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.

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(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.

An individual shall be disqualified from unemployment insurance benefits in any week he or she has received wages, including severance pay, provided it is greater than the weekly benefit amount to which he or she is entitled. Iowa Code § 96.5(5). Additionally, the amount received

in severance pay is completely deductible from the individual's weekly benefit amount. Iowa Admin. Code r. 871-24.13(3)c. The claimant earned severance pay in the amount of \$1,400.00 that exceeded his weekly benefit amount. While claimant was not paid and did not learn about the severance pay until the week beginning December 18, 2016, the pay was earned by him at the time of his separation. He reported these wages, as soon as he was aware of what they were, when making his claim for weekly benefits, though the wage were actually earned prior to the date they were paid. The severance pay calculation was accurate and the amount was correctly deducted.

DECISION:

The January 25, 2017, (reference 07) unemployment insurance decision is affirmed. The severance pay was correctly deducted.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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