

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY M JANSEN

Claimant

APPEAL NO. 06A-UI-09521-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FIRST FEDERAL SAVINGS BANK
OF SIOUXLAND**

Employer

**OC: 08/20/06 R: 01
Claimant: Appellant (4R)**

Section 96.5(5) –Severance Pay

STATEMENT OF THE CASE:

Mary Jansen filed a timely appeal from the September 20, 2006, reference 02, decision that denied benefits for the four-week period ending September 23, 2006. After due notice was issued, a hearing was held on October 10, 2006. Ms. Jansen participated. Human Resources Generalist Brenda Smalley represented the employer and presented additional testimony through Senior Vice President Peggy Smith. The administrative law judge took official notice of the Agency's administrative file and marked Department Exhibits D-1 and D-2 for identification purposes. Claimant's Exhibit A was received into evidence.

ISSUE:

Whether Iowa Workforce Development correctly deducted severance pay from the claimant's unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mary Jansen was employed by First Federal Savings Bank of Siouxland as an Account Manager/Manager of Accounting Department Staff until August 21, 2006, when the employer eliminated her position as part of internal reorganization. Ms. Jansen's normal working hours had been 8:00 a.m. to 5:00 p.m., Monday through Friday. Ms. Jansen's final salary was \$46,350 per annum. This worked out to be \$891.35 per week or \$178.27 per day. The employer paid Ms. Jansen twice a month, on the 15th day of the month and on the last day of the month. At the time Ms. Jansen separated from the employment, she had 40 hours in unused vacation benefits. In addition, the employer agreed to pay Ms. Jansen the equivalent of four weeks' salary as severance pay. Ms. Jansen signed the separation agreement on August 29, 2006.

Ms. Jansen established a claim for benefits that was effective August 20, 2006. On August 22, Iowa Workforce Development mailed a Notice of Claim to the employer. The Notice of Claim contained a deadline for the employer's protest or response to the claim, which was September 1, 2006. On August 29, the employer used the protest form to provide information to

Iowa Workforce Development concerning the separation. The employer did not challenge Ms. Jansen's eligibility for benefits. The employer indicated on the form that Ms. Jansen was due vacation benefits in the gross amount of \$902.34 to be applied to the period of August 22-28, 2006. Because the employer had not yet received a signed separation agreement from Ms. Jansen, the employer did not include information regarding the severance pay in its initial response to Iowa Workforce Development. After the employer received the signed separation from Ms. Jansen, the employer submitted an amended protest/response form that indicated Ms. Jansen was entitled to severance pay totaling \$3,565.40 to be applied to the period of August 29 through September 26, 2006.

The employer's reasoning behind the dates to which vacation and severance pay were to be applied was as follows. Because Ms. Jansen's last day of employment was Monday, August 21, the employer wanted the 40 hours of vacation pay applied to what would have been the next five working days. These were Tuesday-Friday, August 22-25, and Monday, August 28. Because the last day to which vacation benefits were to be applied was Monday, August 28, the employer wanted the four weeks' severance pay period to commence Tuesday, August 29. Under this reasoning, the last day to which severance benefits would have been applied would be Monday, September 25. However, the employer erroneously indicated September 26 as the final day to which severance pay should be applied. The employer is now willing to have that error corrected through the appeal hearing process.

Iowa Workforce Development followed the employer's timely designation of the period to which severance should be applied in determining Ms. Jansen's eligibility for benefits during the affected weeks. Based on the employer's timely designation, Iowa Workforce Development apportioned two days' severance pay to the benefit week that ended September 30, instead of apportioning one day's severance to that week. This apportionment decreased Ms. Jansen's eligibility for unemployment insurance benefits during the week that ended September 30.

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 paragraphs "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.

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.

Workforce Development Rule 871 IAC 24.13(1) provides as follows:

Deductible and nondeductible payments.

24.13(1) *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the **last day paid** which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the **amount of the payment and the period to which the amount applies**. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96). The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

The evidence in the record establishes that the employer made a timely designation of the period to which Ms. Jansen's severance pay was to be applied. Accordingly, the employer's designation is controlling. Based on the information provided by the employer, Iowa Workforce Development appropriately apportioned the severance pay and deducted it from Ms. Jansen's unemployment insurance benefits. Under the apportionment of the severance pay, the Agency correctly determined that Ms. Jansen was disqualified for benefits during the four-week period

that ended September 23, 2006. Under the apportionment of the severance pay, the Agency concluded that \$340.00, or two days' worth of the severance pay, should be applied to the benefit week that ended September 30, 2006. That amount was deducted from Ms. Jansen's \$360.00 weekly benefit allowance to achieve a weekly benefit amount of \$20.00. Although Iowa Workforce Development did not err in apportioning the severance pay according to the employer's timely directive, the information the employer had provided to the Agency concerning the last day to which benefits should be applied was erroneous and resulted in one extra day of severance benefits being apportioned to the benefit week ending September 30, 2006. The parties each desire correction of this error.

In the present case, strict application of the Workforce Development rule would prevent the correction of an error, would lead to an unreasonable and unjust outcome, and would fail to give full effect to the intention of the Agency or the Iowa Legislature. Based on the evidence in the record, the administrative law judge deems it appropriate to amend the employer's designation of the last day to which the severance pay should be applied to the correct day, Monday, September 25. This correction shortens the period to which benefits should be applied from 21 working days to 20 working days and increases the amount of the severance to be apportioned to each day. The corrected amount \$3,565.40 divided by 20 days, or \$178.27, which should be rounded to \$178.00. This correction has no impact on Ms. Jansen's benefits for the four weeks ending September 23 because the weekly severance pay still exceeds the \$360.00 weekly benefit amount. The correction does affect Ms. Jansen's eligibility for benefits during the week that ended September 30. Ms. Jansen's benefit eligibility for that week would be \$360.00 minus \$178.00, or \$182.00. This matter will be remanded to a claims representative for issuance of \$162.00 in additional benefits for the week that ended September 30.

DECISION:

The Agency representative's September 20, 2006, reference 02, is affirmed, but modified as follows. The claimant is denied benefits for the four-week period ending September 23, 2006. The claimant is eligible for \$162.00 in additional benefits for the week that ended September 30, 2006.

REMAND:

This matter is remanded to a claims representative for issuance of \$162.00 in additional benefits for the week that ended September 30.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/cs