

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANN M MOSKOWITZ
Claimant

APPEAL NO: 07A-UI-02585-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

**OC: 02/11/07 R: 12
Claimant: Appellant (4)**

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 9, 2007, reference 01, decision that deducted severance pay from benefits. After due notice was issued, a telephone conference hearing was held on March 29, 2007. Claimant participated. Employer participated through Carol Wells.

ISSUE:

The issue is whether severance pay was 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 February 12, 2007, and received two weeks' or ten work days' (not 11 as the representative calculated) severance pay based upon a rate of pay at \$200.28 per day. The employer did designate the period of time to which the severance pay was to be applied as ending on February 26, 2007. The weekly benefit amount (WBA) is \$334.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was incorrectly deducted.

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 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.

Severance pay is deducted on a dollar for dollar basis. Therefore, part of the amount of severance pay was incorrectly deducted for the one-week period ending March 3, 2007. The WBA of \$334.00 less the one day of severance pay of \$200.00 (rounded down) leaves partial benefits of \$134.00 for the week at issue.

DECISION:

The March 9, 2007, reference 01, decision is modified in favor of the appellant. The severance pay was incorrectly deducted. Claimant is entitled to partial benefits of \$134.00 for the week ending March 3, 2007.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs