

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VIRGINIA R HOPKINS**  
Claimant

**APPEAL NO. 14A-UI-09873-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACT INC**  
Employer

**OC: 04/27/14**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Virginia Hopkins filed a timely appeal from the September 16, 2014, reference 02, decision that denied benefits for the 13 weeks ending July 26, 2014, based on an Agency conclusion that she had received severance pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on October 13, 2014. Ms. Hopkins participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 14A-UI-09874-JTT and 14A-UI-09875-JTT. Exhibits A and B and Department Exhibits D-1 through D-5 were received into evidence.

**ISSUE:**

Whether Ms. Hopkins received severance pay or the equivalent that was deductible from her unemployment insurance benefit eligibility for the 13 weeks ending July 26, 2014.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Virginia Hopkins established a claim for unemployment insurance benefits that was effective the week that started April 27, 2014, in connection with an April 28, 2014 separation from her professional position at ACT, Inc. Ms. Hopkins has received unemployment insurance benefits totaling \$3,392.00. Ms. Hopkins did not receive any benefits for the week ending May 3, 2014. Ms. Hopkins received \$424.00 in benefits for the week ending May 10, 2014. Ms. Hopkins did not receive any benefits for the week ending May 17, 2014. Ms. Hopkins received \$424.00 in benefits for each of the seven weeks between May 18, 2014 and July 5, 2014. Ms. Hopkins did not receive any benefits for the six-week period between July 6, 2014 through August 16, 2014. Ms. Hopkins' claim for benefits discontinued after the benefit week that ended August 16, 2014.

At the time Ms. Hopkins separated from ACT, Ms. Hopkins entered into a "Separation and Release Agreement" with the employer. The employer agreed to pay Ms. Hopkins 12 weeks of "separation pay" in exchange for Ms. Hopkins' agreement to release the employer from a variety of potential causes of action and her agreement to abide by additional provisions. Ms. Hopkins signed the agreement on April 29, 2014. On or about May 16, 2014, the employer provided

Ms. Hopkins with 12 weeks of "separation pay," totaling \$45,051.96, minus tax withholdings. The appropriate net amount was direct deposited in Ms. Hopkins' bank account on or about May 16, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

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 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.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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 for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits which would otherwise be due, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted severance pay, separation pay, or the equivalent to include a voluntary benefit used to attract employees or “conscience money” to help a former employee survive a lay off. The Appeals Section has historically excluded from the definition of severance pay, separation pay, or the equivalent circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. The separation pay at issue in this matter arose out an attempt by the employer to resolve legal matters, or potential legal matters, between itself and Ms. Hopkins. Under the Agency’s historic interpretation of severance pay, separation pay, or the equivalent the settlement amount issued to Ms. Hopkins falls outside the Agency’s definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and is not deductible from Ms. Hopkins’ unemployment insurance benefits under Iowa Code Section 96.5(5).

**DECISION:**

The claims deputy’s September 16, 2014, reference 02, decision is reversed. The claimant did *not* receive severance pay, separation pay, or the equivalent that was deductible from her unemployment insurance benefits during the 13 weeks that ended July 26, 2014 or otherwise. The claimant is eligible for benefits during the period in question, provided she is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs