

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER K PFISTER
Claimant

APPEAL NO. 09A-UI-10218-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DICE CAREER SOLUTIONS INC
Employer

OC: 02/08/09
Claimant: Appellant (2)

871 IAC 24.35(2) – Appeal Delay
Section 96.5-5-a – Severance Pay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated June 3, 2009, reference 03, that disqualified her for the six weeks ending March 21, 2009 due to receiving severance pay. A hearing was held on August 4, 2009. The claimant participated. The employer did not participate. Claimant Exhibits A and B was received as evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal.

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant was laid-off by Dice Career Solutions on February 11, 2009, and she entered into a General Release Agreement with her employer. The Agreement provides that the claimant will receive about six weeks of severance pay totaling \$8,459.34 upon her separation from employment. The Agreement requires the claimant to release all claims against her employer as a condition of receiving severance pay. The claimant signed and submitted the agreement to her employer, and she received the severance pay.

The employer protested the claimant's claim by applying the gross severance pay to a period from February 12, 2009 to March 23, 2009, and the accrued vacation pay of \$534.00 to a period from March 26 to March 31, 2009.

The claimant questioned a department representative about the employer's protest of her claim as to the vacation and severance pay. The representative stated there was nothing the claimant could do to challenge the protest. The claimant did not immediately appeal the department June 3 or 4, 2009 decisions based on the department statement. On July 15, claimant learned from a former co-worker that he had successfully challenged the employer

protest of severance and vacation pay. On July 17, the claimant filed an appeal that was received by her local Workforce Center on that date.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant affected a timely appeal on July 17, 2009, as the delay was due to department miss-information. The claimant received department advice in response to her inquiry whether there was anything she could do about the employer protest of vacation/severance pay that stated there was nothing she could do. The advice discouraged the claimant to appeal to the June decisions until she learned from a co-worker on July 15 that he had successfully challenged the employer payments. The only department advice to be given is the right of appeal to a department decision.

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 employer requirement the claimant sign a general release of all claims against it negates the payment of severance pay (\$8,459.34), which is not deductible from unemployment benefits, as protested by the employer.

While the employer used the claimant's length of service to determine the amount of separation pay, it required to her sign a general release of all claims that shifts the consideration of the payment beyond service to the employer. The claimant was required to release the employer from any liability claim in order to receive the employer labeled, vacation/severance pay that makes it not qualifying as deductible from unemployment benefits.

DECISION:

The decision of the representative dated June 3, 2009, reference 03, is reversed. The claimant affected a timely appeal. The claimant did not receive vacation/separation pay that is considered as disqualifying from unemployment benefits due to the requirement she agree to

release the employer from liability as to all claims. The claimant is not disqualified for the six-week period ending March 21, 2009, and she is entitled to benefits, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css