

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LARRY A YOCUM**  
Claimant

**INNOVATIVE AG SERVICES**  
Employer

**APPEAL 17A-UI-01955-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/11/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 14, 2017, (reference 02) unemployment insurance decision that deducted severance pay from benefits for the two week-ending December 31, 2016. The parties were properly notified about the hearing. A telephone hearing was held on March 15, 2017. Claimant participated. Employer participated through human resources generalist Sandy Kelchen.

**ISSUES:**

Did the claimant receive severance pay at separation?  
Is that amount deductible from benefits, and if so, for what period?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed through December 9, 2016. At the time of separation he had accumulated but unused paid time off (PTO) in the gross amount of \$1,235.08 equivalent to 51.44 hours. The employer did not designate the period of time to which the PTO was to be applied. Claimant reported the PTO during the first week of benefits claimed the week-ending December 17, 2016, and received no benefits. The employer also paid him the equivalent of three weeks' severance pay in two payroll periods in the gross amounts of \$1,920.68 and \$960.34. Claimant was not required to sign a waiver of rights. He did not report severance pay during the two weeks-ending December 31, 2016, and was paid gross unemployment insurance benefits of \$447.00 for each of the two weeks totaling \$894.00. He found other employment and reported gross wages of \$576.00 for the week-ending January 7, 2017, and received no unemployment insurance benefits. He did not file any other weekly continued claims.

**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 section 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 subparagraph, 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.

The Unemployment Insurance Handbook at page 20 provides:

**FULLY DEDUCTIBLE FROM THE BENEFIT PAYMENT**

Each dollar the individual earns reduces their benefit payment by one dollar (dollar-for-dollar).

Vacation pay and paid time off

Severance pay

Example:

A individual's WBA is \$400 and they receive a \$370 vacation payout for the week they are claiming.

$\$400 - \$370 = \$30.$

\$30 is the payment amount for the week

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. It has traditionally excluded from the

definition of “severance pay” 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 greater weight of the evidence in the record indicates that the settlement amount at issue in this case arose out an attempt by the employer to resolve legal matters, or potential legal matters, between it and the claimant. Under the Agency’s historic interpretation of “severance pay,” the settlement amount issued to the claimant would fall outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code section 96.5(5). The severance pay calculation was accurate and the amount was correctly deducted.

**DECISION:**

The February 14, 2017, (reference 02) unemployment insurance decision is affirmed. The severance pay was deducted for the correct period.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs