

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANN HUBERTY
Claimant

APPEAL NO: 14A-UI-04271-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTO CLUB SERVICES INC
Employer

OC: 02/02/14
Claimant: Appellant (2)

Iowa Code § 96.5-5 – Receipt of Severance
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant appealed an unemployment insurance decision dated April 7, 2014, reference 04, which allowed deduction of severance pay from unemployment benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held on May 13, 2014. Exhibits One and A were admitted into evidence.

ISSUE:

The issue is whether severance pay was deducted for the correct period and amount. The issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was separated from employment on February 4, 2014. After the separation from employment claimant received severance pay in the amount of \$1,708.00. This equates to three weeks of pay at a rate of \$14.23 per hour. Claimant signed a legal release in consideration for receipt of the severance pay. The release extinguished claimant's right to bring legal actions against employer.

Claimant filed her appeal late due to advice from a local Workforce office. Claimant was told to not do anything about the severance issue on April 1. Claimant misconstrued the advice to mean that she did not need to appeal the decisions that came out a week later. The delay was due to advice from a local Workforce representative.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the severance pay was properly deducted. For the reasons that follow, the administrative law judge concludes the severance pay was not deducted for the correct period.

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 § 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 § 96.5(5). Severance pay is a dollar for dollar offset as against unemployment benefits.

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance 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 Bureau has historically 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 of an attempt by the employer to resolve potential legal matters, between itself and the claimant. Claimant's act of signing a legal release to obtain the compensation demonstrates consideration for release of a legal claim. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to the claimant falls outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay. The legal settlement amount is not deductible from the claimant's unemployment insurance benefits under Iowa Code § 96.5(5). The claimant is eligible for benefits for benefits effective February 2, 2014, provided claimant is otherwise eligible.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

Claimant's appeal is timely as she delayed because of advice from a Workforce Development office. Claimant misconstrued the advice and as a result delayed her appeal until the employer told her that she was entitled to benefits.

DECISION:

The unemployment insurance decision dated April 7, 2014, reference 04, is reversed. Severance pay was not deducted correctly. The claimant is eligible to receive unemployment insurance benefits for the two-week period ending February 15, 2014. Claimant's appeal is timely.

Marlon D Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css