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

MATT A WINGERTER
Claimant

APPEAL NO: 09A-UI-08873-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIGOTT INC
Employer

OC: 02/15/09
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Matt A. Wingerter (claimant) appealed a representative's June 12, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits for a three-week period ending March 7, 2009 due to the receipt of severance pay from Pigott, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2009. This appeal was consolidated for hearing with two related appeals, 09A-UI-08874-DT and 09A-UI-08875-DT. The claimant participated in the hearing. Tina Mutchler appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive severance pay which was properly allocated and deducted from his unemployment insurance benefit eligibility?

FINDINGS OF FACT:

The claimant worked full time doing installation at an hourly rate of $11.64 per hour. His regular work schedule was Monday through Friday, eight hours per day, 40 hours per week. His last day of work was February 5, 2009. At the time of his separation from employment, the employer offered the claimant a severance package, which included 160 hours for four weeks' worth of compensation designated as "severance pay," which should have amounted to $1,862.40; this was contingent on his signing a release of liability and waiver of all claims against the employer, which he did. If he had chosen not to sign the release and waiver, he would still have been separated from employment, but he would not have received the "severance pay" payment.

The claimant received a stand alone "severance pay" payment in a separate check on February 17, 2009. He reported the receipt of the entire amount during the first week of his unemployment insurance claim, the week ending February 21, 2009. The employer had

designated the allocation of the payment to be for a four-week period beginning February 6 and ending March 5.

REASONING AND CONCLUSIONS OF LAW:

If severance pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility. Iowa Code § 96.5-5-a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1).

The term "severance pay" is used in the statute and the rules regarding deductible payments, but the law provides no legal definition of the term. The dictionary defines "severance pay" as "an allowance usually based on length of service that is payable to an employee on termination of employment." Merriam-Webster's Collegiate Dictionary 1073 (10th ed. 1993).

In this case, the payment amounts to consideration for the release signed by the claimant of all legal claims against the employer; the payment was contingent on the claimant signing a release of liability and would not have been paid without the claimant signing the release. This is not deductible severance pay, but rather is compensation for relinquishing other rights. Therefore, the payment the claimant received shall not be deducted from his unemployment insurance benefits.

DECISION:

The representative's June 12, 2009 decision (reference 01) is reversed. The payment the claimant received is not a deductible severance payment and is therefore not deductible from the claimant's unemployment insurance benefit eligibility.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/pjs