

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M STRONG
Claimant

APPEAL NO. 08A-UI-06561-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RFK TRANSPORTATION LLC
Employer

**OC: 06/01/08 R: 03
Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Teresa Strong filed a timely appeal from the July 11, 2008, reference 02, decision that denied benefits for the four-week period of June 8 through July 5, 2008 and that concluded Ms. Strong had received severance pay applicable to those weeks that exceeded her weekly unemployment insurance benefit amount. After due notice was issued, a hearing was held on July 30, 2008. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-06560-JTT and 08A-UI-06562-JTT. Ms. Strong participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A and B and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge hereby takes official notice of the decision entered in Appeal Number 08A-UI-06560-JTT, which concerned vacation pay.

ISSUES:

Whether the claimant received severance pay, or its equivalent, in connection with her separation from the employment.

Whether the employer made a timely designation of the period to which severance pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which severance pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Strong worked as a full-time customer service representative from March 1999 until June 3, 2008, when she was laid off. Ms. Strong's employer, RFK Transportation, was in the midst of joining with another company and Ms. Strong's position was eliminated in connection with the merging of the two companies. Ms. Strong's last day of work was Tuesday, June 3, 2008. On June 3, 2008, the employer presented Ms. Strong with a "Severance Agreement and Package" document. The employer agreed to pay her the equivalent of three weeks' wages, provided

Ms. Strong agreed to an extensive waiver of rights. See Exhibit A. In addition, Ms. Strong had to agree to cooperate with the employer on a number of issues. See Exhibit A. The provisions of the "Severance Agreement and Package" legal settlement document were so numerous and complex that Ms. Strong had to consult with an attorney in order to understand the content of the document. Ms. Strong did sign the document and returned it to the employer. In exchange for signing the legal settlement document, Ms. Strong received \$2,191.20.

On June 4, 2008, Workforce Development mailed a notice of claim to the employer concerning Ms. Strong. The notice of claim provided a June 16, 2008 deadline for the employer's response. The employer filed its response on June 10, 2008. The employer did not protest the claim for benefits. The employer indicated that Ms. Strong had received "severance pay" totaling \$2,191.20. The employer designated the period to which the "severance pay" should be applied when determining Ms. Strong's unemployment insurance benefit eligibility: June 11, 2008 through July 2, 2008.

Ms. Strong established a claim for unemployment insurance benefits that was effective June 1, 2008. Ms. Strong did not receive benefits for the weeks that ended June 7 and June 14. For the weeks ending June 21, June 28, and July 5, Workforce Development disbursed \$373.00 in weekly benefits to Ms. Strong. For the weeks ending July 12 and July 19, Workforce Development authorized \$373.00 in benefits, but applied the benefits toward a supposed overpayment, once the Workforce Development concluded that an overpayment had occurred.

For the week that ended June 7, Ms. Strong received vacation pay that exceeded her weekly benefits amount. See Appeal Number 08A-UI-06560-JTT. For the week that ended June 14, 2008, Ms. Strong received \$292.00 in vacation pay that Workforce Development apportioned to the first two working days of that week. See Appeal Number 08A-UI-06560-JTT.

In response to the timely information the employer provided concerning "severance pay," a Workforce Development representative apportioned the \$2,191.20 "severance pay" amount over the period designated by the employer: June 11, 2008 through July 2, 2008. The Workforce Development representative utilized a five-day workweek. The Workforce Development representative's apportioning of the "severance pay" resulted in \$410.85 being apportioned to three remaining working days in the week ending June 14, 2008. The apportioned vacation pay and apportioned "severance pay" together exceeded Ms. Strong's weekly benefit amount. The Workforce Development representative apportioned the remainder of the "severance pay" amount to the weeks ending June 21, June 28, and July 5. For these three weeks, the apportioned "severance pay" exceeded Ms. Strong's weekly benefit amount. The apportionment of the "severance pay" prompted an overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

A person is 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 that exceed the person's weekly unemployment insurance benefit amount. See Iowa Code section 96.5(5)(a). If the apportioned severance pay amount 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. See Iowa Code section 96.5(5).

The Unemployment Insurance Appeals Section of Iowa Workforce Development considers "severance pay," and its equivalent, to include voluntary benefits used by an employer to attract employees or "conscience money" provided by an employer to help a former employee survive

a lay off. The Appeals Section has historically excluded from the definition of "severance pay," and 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 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 itself and Ms. Strong. In addition, the payment was conditioned on Ms. Strong's agreement to further cooperate with the employer and a non-compete agreement. Under the Appeals Section's historic interpretation of "severance pay," the legal settlement amount issued to Ms. Strong does not meet the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay. Accordingly, the legal settlement amount would not be deductible from his Unemployment Insurance Benefits under Iowa Code section 96.5(5).

DECISION:

The Agency representative's July 11, 2008, reference 02, decision is reversed. The claimant did not receive severance pay. Instead, the claimant received a legal settlement amount. The \$2,191.20 legal settlement amount is not deductible from the claimant's unemployment insurance benefits. This matter is remanded to the Claims Division so that a possible underpayment of benefits for the week ending June 14, 2008 may be addressed.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css