

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE M BUNKERS
Claimant

APPEAL NO. 09A-UI-06595-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NEW HOLLAND TRADING CO
BLUE MOUNTAIN PASSPORT CLUB**
Employer

**OC: 11/02/08
Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Kyle Bunkers filed a timely appeal from the April 21, 2009, reference 02, decision that denied benefits for the two-week period ending November 15, 2008 due to a conclusion that Mr. Bunkers had received severance pay that exceeded his weekly unemployment insurance benefit amount. After due notice was issued, a hearing was held on May 26, 2009. Claimant participated. Jill Reuvers, Human Resources Manager, represented the employer. Exhibits A and B and Department Exhibits D-1 through D-4 were received into evidence.

ISSUE:

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

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

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kyle Bunkers was employed by New Holland Trading Company d/b/a Blue Mountain Passport Club as a full-time sous chef until October 30, 2009, when the employer discharged him from the employment. In January 2008, the employer had provided Mr. Bunkers with a personal loan. At the end of the employment, the owner told Mr. Bunkers he was forgiving the balance of the loan. The employer did not provide Mr. Bunkers with severance pay or the equivalent. Mr. Bunkers did not receive severance pay or the equivalent.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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).

871 IAC 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 section 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 section 96.5(5).

The evidence indicates that Mr. Bunkers did not receive severance pay in connection with his separation from the employment. Accordingly, there would be no severance pay to deduct from Mr. Bunkers' unemployment insurance benefits. Mr. Bunkers was eligible for unemployment insurance benefits for the two-week period ending November 15, 2008, provided he was otherwise eligible.

DECISION:

The Agency representative's April 21, 2009, reference 02, decision is reversed. The claimant did not receive severance pay in connection with his separation from the employment. The claimant was eligible for unemployment insurance benefits for the two-week period ending November 15, 2008, provided he was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs