

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY R ZUMBACH
Claimant

GOLDMAN SACHS BANK USA HOLDINGS
Employer

APPEAL 18A-UI-06851-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/29/18
Claimant: Appellant (2)**

Iowa Code § 96.5(5)a(1) – Severance Pay
Iowa Admin. Code r. 871-24.13(3)c – Severance Pay

STATEMENT OF THE CASE:

Brittany R. Zumbach (claimant) filed an appeal from the June 21, 2018, reference 05, decision that deducted severance pay from Goldman Sachs Bank USA Holdings (employer) from benefits. After due notice was issued, a telephone conference hearing was held on July 12, 2018. The claimant participated. The employer did not respond to the hearing notice and did not participate.

ISSUE:

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from employment on April 30, 2018. She had been notified the year prior that the employer would be closing her branch. She was offered an opportunity to enter into an agreement with the employer that she would stay employed in good standing until the date determined by the employer and, in return, would receive a lump sum of \$20,000.00 at the end of her employment. She also had to agree to waive her rights to litigation or arbitration of certain employment related issues to receive the lump sum. The claimant signed the agreement, remained employed in good standing, and received the lump sum payment at the end of her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not receive severance pay.

Iowa Code section 96.5(5) provides¹:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

Deductible and nondeductible payments.

¹ This statute has been amended effective July 1, 2018. However, the previous version of the statute is being used in this decision as it was the law in effect at the time the claimant's employment ended and the employer paid her the lump sum.

(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 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. Since the claimant is expected to agree to the terms of the agreement, payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant, but was for a contractual obligation. Payment in consideration of that obligation is not considered wages. Therefore, the agreement consideration should not be deducted from benefits and the entire amount of "severance" pay was incorrectly defined and deducted. Benefits are allowed effective April 29, 2018.

DECISION:

The June 21, 2018, reference 05, unemployment insurance decision is reversed. The claimant did not receive severance pay and the contract consideration was incorrectly defined and deducted.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn