

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALINDA S TIMM
Claimant

APPEAL NO: 06A-UI-08402-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREGORY L KLINE
ASHWORTH FAMILY DENTISTRY
Employer

OC: 07-16-06 R: 02
Claimant: Appellant (4)

Iowa Code § 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 15, 2006, reference 02, decision that deducted severance pay from benefits. After due notice was issued, a hearing was held on September 12, 2006. Claimant participated. Employer participated through Gregory Kline, D.D.S.

ISSUE:

The issue is whether severance pay was correctly deducted from benefits for the two-week period ending July 29, 2006.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed through July 13, 2006 and was paid \$1360.00 of severance pay for two weeks ending July 27, 2006 and vacation pay of \$306.00 for two and one-quarter workdays beyond that. Her rate of pay was \$17.00 per hour and she was paid severance pay based upon a 40-hour week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for an incorrect period.

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 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.

871 IAC 24.13(4)b provides:

(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

- b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

Since claimant's separation was July 13, her two weeks' severance pay would have ended July 27, 2006, at which point her vacation pay should have been applied to the following two and one-quarter workdays ending August 1, 2006. Thus, the severance pay should have been deducted only through July 27, 2006 and one workday of vacation pay should have been deducted for Friday, July 28, leaving one and one-quarter days' of vacation pay during the week

ending August 5, 2006. The weekly benefit amount (WBA) of \$334.00 less a dollar for dollar deduction of \$170.00 remaining vacation leaves \$164.00 of benefits due claimant for the week ending August 5, 2006.

DECISION:

The August 15, 2006, reference 02, decision is modified in favor of the appellant. The severance pay was deducted for an incorrect period. Claimant was paid severance pay through July 27, 2006 and vacation pay through July 31, 2006 and a partial day on August 1, 2006 and should have been paid \$164.00 in partial unemployment insurance benefits for the week ending August 8, 2006.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw