

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L DAVIS
Claimant

APPEAL NO. 09A-UI-07675-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAUER-DANFOSS (US) CO
Employer

OC: 11/23/08
Claimant: Appellant (2)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated May 14, 2009, reference 03, that concluded claimant was ineligible for the Three weeks ending December 20, 2008 for unemployment insurance benefits. A telephone hearing was scheduled and held on June 11, 2009 pursuant to due notice. Claimant did participate. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue is whether severance pay was deducted for the correct period and amount.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with employer was separated on January 1, 2009 and claimant received severance pay in the amount of \$3,265.00 based upon a rate of pay at \$18.01 per hour. Employer did designate the period of time to which the severance pay was to be applied. Claimant was required to sign a release giving up certain legal rights in order to receive the severance pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that severance pay was not deducted for the correct 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.

Because employer required a signed legal release the severance pay is pay in consideration for giving up a legal right. The entire amount was not correctly deducted from the three weeks of benefits following the separation. No severance pay deduction is allowed.

DECISION:

The May 14, 2009, reference 03, decision is reversed. The severance pay was not deducted for the correct period. No severance pay deduction has been established.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs