

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD M VERHOEF
Claimant

APPEAL NO. 08A-UI-07542-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/22/08 R: 02
Claimant: Appellant (1)**

Section 96.5-5 – Severance Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated August 20, 2008, reference 06, that concluded claimant was ineligible for the one week ending July 12, 2008 for unemployment insurance benefits and overpaid \$360.00. A telephone hearing was scheduled for and held on September 3, 2008, pursuant to due notice. Claimant did participate.

ISSUE:

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

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 June 26, 2008 and claimant received severance pay in the amount of \$1,210.00 based upon a rate of pay at \$1,210.00 semi-monthly. Claimant was paid for the full month of June and then an extra 15-day check accruing through July 15, 2008. Claimant asserts that he declared the income on his weekly report in the first week and therefore it should not count against him in the latter weeks. Employer did designate the period of time to which the severance pay was to apply.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that severance pay was 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 did designate a time period to which the severance pay is to apply, the amount was correctly deducted from the one week of benefits ending July 12, 2008 following the separation. The date of report or receipt is not relevant to deductibility. Severance pay is deducted based on the weeks it would accrue after the employment relationship ended. As such, it does not matter when claimant received the pay or reported the income. It is deducted based on how it accrued. Claimant is overpaid \$360.00 for the one week ending July 12, 2008.

DECISION:

The August 20, 2008, reference 06, decision is affirmed. The severance pay was deducted for the correct period. Claimant is overpaid \$360.00 for the one week ending July 12, 2008.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw