

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY R MELBY**  
Claimant

**APPEAL NO. 07A-UI-00617-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARRISON COUNTY RURAL ELECTRIC**  
Employer

**OC: 11/26/06 R: 01  
Claimant: Appellant (2)**

Section 96.5(5) – Severance  
871 IAC 24.13(3)(c) – Payments Fully Deductible from Benefits.  
871 IAC 24.13(1) – Apportionment of Severance Pay

**STATEMENT OF THE CASE:**

Timothy Melby filed a timely appeal from the January 9, 2007, reference 02, decision that denied benefits for the six-week period ending January 6, 2007 and concluded that Mr. Melby was receiving or was entitled to receive wages in lieu of notice, severance pay, separation, allowance or dismissal pay. After due notice was issued, a hearing was held on February 1, 2007. Mr. Melby participated. Office Manager Lori Barry represented the employer and presented additional testimony from Joe Farley. The administrative law judge received Claimant's Exhibits A through E and Department Exhibits D-1, D-2, and D-3 into evidence.

**ISSUES:**

Whether the claimant received or was entitled to receive wages in lieu of notice, severance pay, separation, allowance or dismissal pay.

Whether Iowa Workforce Development applied the correct severance pay amount to the correct period in determining the claimant's eligibility for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Melby was employed by Harrison County Rural Electric Cooperative as a full-time first-class lineman until he separated from the employment on November 30, 2006. Prior to the separation date, Mr. Melby had been off work for an extended period due to medical issues. Mr. Melby's separation from the employment occurred because he was no longer able to meet the physical requirements of the work and his doctor would not release him to return to the work. Mr. Melby's normal work hours had been 7:30 a.m. to 4:00 p.m., Monday through Friday. Mr. Melby's final rate of pay had been \$23.59 per hour. The employer continued to pay Mr. Melby his regular wage through November 30, 2006.

In connection with Mr. Melby's separation from the employment, Joe Farley, Manager and Executive Vice President, engaged in a discussion with Mr. Melby about "severance pay." The

employer did not have a policy of providing severance pay and did not ordinarily provide severance pay. In connection with Mr. Melby's separation from the employment, the employer proposed a \$3,000.00 "severance pay" amount to be paid to Mr. Melby in installments. There was no formal or final agreement regarding severance pay at the time Mr. Melby separated from the employment.

Mr. Melby subsequently consulted an attorney regarding the matter. Mr. Melby's attorney and the employer's attorney reached a settlement whereby the employer would pay Mr. Melby \$6,000.00 as a lump-sum amount. On or about December 27, approximately one month after the separation, Mr. Melby signed the agreement worked out by the attorneys. The employer withheld various taxes from the settlement amount and, on January 3, issued a check to Mr. Melby in the net amount of \$3,823.00. Mr. Melby signed the check over to his attorney, who deducted \$700.00 in fees and, on January 4, issued Mr. Melby a check for \$3,123.80.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(5)(a) provides, in relevant part, as follows:

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.

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.

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.

Workforce Development Rule 871 IAC 24.13(1) provides as follows:

*Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13 (3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall

determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13 (2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18 (96). The amount of any payment under subrule 24.13 (3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a layoff. The Appeals Section has historically 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. The greater weight of the evidence in the record indicates that the settlement amount at issue in this case arose out an attempt by the employer to resolve legal matters, or potential legal matters, between itself and Mr. Melby. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to Mr. Melby would fall outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code section 96.5(5).

**DECISION:**

The Agency representative's January 9, 2007, reference 02, decision is reversed. The claimant did not receive "wages in lieu of notice, severance pay, separation, allowance or dismissal pay." Accordingly, no severance pay amount will be deducted from the claimant's benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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