

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHET TIMMS

Claimant

APPEAL NO. 09A-UI-10809-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBL FINANCIAL GROUP INC

Employer

Original Claim: 03-15-09

Claimant: Appellant (5)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 21, 2009, reference 02, decision that determined his severance pay was incorrectly deducted from his unemployment benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 12, 2009. The claimant participated in the hearing. Dawn Hannum, Human Resources Specialist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant's severance pay was incorrectly deducted.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed with FBL Financial Group through January 28, 2009, when he was a part of the employer's reduction in force and he received severance pay in the amount of \$42,637.26 in lieu of salary. His salary was \$315.83 per day and \$1,579.15 per week. He was paid his normal salary through February 11, 2009, and was then paid 27 days of vacation from February 12 through March 20, 2009, in the amount of \$12,133.35. The employer did designate the period of time to which the severance pay was to be applied as March 23, 2009 through September 22, 2009. He was rehired by the employer May 18, 2009, in the same capacity as he previously held.

REASONING AND CONCLUSIONS OF LAW:

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

The claimant first received vacation pay in the amount of \$12,133.35 divided over six weeks, five for which the claimant did not file a claim for benefits, for a total of \$449.38 per day,

\$2,246.90 per week. The claimant received severance pay in the amount of \$42,637.26 divided over six months' time, which is \$315.83 per day and \$1,579.15 per week for a total of 27 weeks. In between the vacation and severance pay, he received unemployment insurance benefits for the nine weeks between March 15 and May 16, 2009. The severance pay should have been deducted immediately following the vacation pay deduction.

DECISION:

The July 21, 2009, reference 03, decision is modified with no effect. The claimant's severance pay should have been deducted following his vacation pay the weeks ending March 28, 2009, through the week ending September 26, 2009.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw