

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK S JOHNSTON
Claimant

APPEAL NO: 14A-UI-10601-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST BANK
Employer

OC: 08/24/14
Claimant: Appellant (2)

Section 96.5-5-a – Severance Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 7, 2014, reference 04, that concluded he was ineligible to receive unemployment insurance benefits for the one week ending August 30, 2014 due to the receipt of severance pay. A telephone hearing was held on November 3, 2014. The claimant participated in the hearing. Bill Messerschmidt participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible severance pay and was it properly deducted?

FINDINGS OF FACT:

The claimant worked for the employer from September 2013 to July 7, 2014. After his separation from work, the claimant received payment of \$2,076.93 for 40 hours of unused vacation pay and \$16,615.40 for 8 weeks of severance pay. The severance pay was conditioned on the claimant signing a severance agreement and release of liability.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 24, 2014. His weekly benefit amount was \$416. The claimant reported an amount as vacation pay during the week ending August 30 and received no benefits for that week. He did not report any payments for the week ending September 6 and received \$416 in benefits.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer reported payments of \$2,076.93 for 40 hours of unused vacation pay and \$16,615.40 for 8 weeks of severance pay. The employer applied the severance pay to the period from July 7 to August 29, 2014.

REASONING AND CONCLUSIONS OF LAW:

The next issue in this case is whether the claimant received vacation pay deductible from his unemployment insurance benefits.

Under the unemployment insurance law, a person is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay or vacation pay of over his weekly benefit amount attributable to the same week. Iowa Code §§ 96.5-5-a and 96.5-7. Employers are permitted to designate the period to which the severance pay or vacation pay is attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1). The statute and rules provided that if the employer does not designate the vacation period, the vacation pay will not be deducted for more than one week. Iowa Code § 96.5-7-d ; 871 IAC 24.16(3). The rules direct that if the specific vacation period is not designated, the entire amount of vacation pay will be applied to the one-week period starting with the day after the last day of work. 871 IAC 24.16(3). There are no similar provisions that apply when an employer fails to designate the severance pay period.

“Severance pay” is set forth in the statute and the rules regarding deductible payments, but the law provides no legal definition of the term. The dictionary definition of “severance pay” is “an allowance usually based on length of service that is payable to an employee on termination of employment.” Merriam-Webster’s Collegiate Dictionary 1073 (10th ed. 1993).

In this case, the payment amounts to consideration for the release signed by the claimant of all legal claims against the employer. The payment was contingent on the claimant signing a release of liability and would have been paid without the release being signed. This is not deductible severance pay.

DECISION:

The unemployment insurance decision dated October 7, 2014, reference 04, is reversed. The claimant did not receive any deductible severance pay attributable to the week ending August 30, 2014.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can