

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-06245-DT
OC: 04/23/06 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Patricia L. Burt (claimant) appealed a representative's June 14, 2006 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits through July 1, 2006 due to the receipt of back pay from Hamilton County Public Hospital (employer). A hearing notice was mailed to the parties' last-known addresses of record for a telephone hearing to be held on July 10, 2006. This appeal was consolidated for hearing with one related appeal, 06A-UI-06244-DT. At the time for the hearing, but in lieu of the hearing being held, the administrative law judge determined that a hearing was not necessary and a decision was made on the record. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

After the issuance of the June 14, 2006 (reference 03) decision, a new decision was issued on June 27, 2006 (reference 05). The reference 05 decision stated that it was amending the reference 03 decision, and stated that the payment made by the employer that had been treated as a back pay award was actually "made in the settlement of a grievance. The employer has not designated the payment as backpay (sic). The designation of the employer is insufficient for a deductible payment from benefits."

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received a back pay award paying the claimant through July 1, 2006.

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 paragraphs "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.

The administrative law judge concludes that the claimant is not disqualified from receiving unemployment insurance benefits due to the receipt of severance pay.

DECISION:

The representative's June 14, 2006 decision (reference 03) is reversed. The claimant is not disqualified from receiving unemployment insurance benefits due to the receipt of severance pay.

ld/cs