

**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**

**SCOTT M WEILER
3925 BROOKDALE CIRCLE
AMES IA 50010 3919**

**IOWA STATE UNIVERSITY
RECRUITMENT & EMPLOYMENT OFFICE
3810 BEARDSHEAR HALL
AMES IA 50011**

**Appeal Number: 04A-UI-05817-H2T
OC 11-30-03 R 02
Claimant: Appellant (1)**

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:

The claimant filed a timely appeal from the May 14, 2004, reference 02, decision that denied unemployment insurance benefits based on the claimant receipt of severance pay. After due notice was issued, a hearing was held on June 17, 2004. The claimant did participate. The employer did participate through Marlene Burkeheimer, Human Resources Specialist. Claimant's Exhibits A and B were received. Department's Exhibit D-1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on November 24, 2003, and received severance pay in the amount of \$19,862.19 based on a yearly salary of approximately \$42,000.00 per year. The claimant and the employer at hearing each admit that the claimant was paid the severance pay upon his separation. Based upon the calculations set out in Department's Exhibit D-1, it is found that the claimant received twenty-four weeks of severance pay until the benefit week ending May 8, 2004. The employer later sent a fax to the Agency indicating it no longer wished to report severance pay for the claimant.

REASONING AND CONCLUSIONS OF LAW:

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

20, 130

While the employer alleges that they had no intention of reporting the claimant's receipt of severance pay, they did in fact make the report to the agency. Once the agency received the information the agency was then under an obligation to investigate whether the claimant did in fact receive severance pay. At hearing neither the claimant nor the employer denied the claimant's receipt of \$19,862.19 in severance pay benefits. The employer's withdrawal of a protest is irrelevant to a factual determination of eligibility for benefits. Kehde v. IDJS, 318 N.W. 2d 202 (Iowa 1982). The law is clear that the employer's protest is irrelevant to the determination and the law also clearly provides that severance pay benefits must be deducted on a dollar per dollar basis from any unemployment insurance benefits to which the claimant may be entitled. It is axiomatic that the parties have an obligation to provide truthful information regarding the claim. Since the parties agree that the claimant did receive the severance pay benefits the administrative law judge concludes that the entire amount of severance pay was correctly deducted for the twenty-four week period ending May 8, 2004.

DECISION:

The May 14, 2004, reference 02, decision is affirmed. The severance pay was deducted for the correct period.

tkh/