

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANN S EHLERS

Claimant

APPEAL NO. 08A-UI-08563-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO EDGE MANAGEMENT INC

Employer

**OC: 08/03/08 R: 01
Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Diann Ehlers filed a timely appeal from the September 17, 2008, reference 03, decision that denied benefits for the four-week period ending September, 2008 due to severance pay. After due notice was issued, a hearing was held on October 9, 2008. Ms. Ehlers participated. Human Resources Generalist Linda Urban represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 08A-UI-08562-JTT and 08A-UI-08564-JTT. The administrative law judge took official notice of the Agency's administrative record of wages reported by the claimant and benefits disbursed to the claimant. Exhibit One and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the claimant received severance pay that was deductible from her unemployment insurance benefits.

Whether Iowa Workforce Development appropriately determined the period to which accrued severance pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Diann Ehlers was employed by Pro Edge Management as a full-time Barn Manager until July 28, 2008 when she was permanently laid off. Ms. Ehlers' last day of work was Monday, July 28, 2008. On July 28, 2008, Human Resources Director Sheila Schramm provided Ms. Ehlers with an Employer Separation Agreement and General Release form. Through the agreement, the employer offered Ms. Ehlers the equivalent of four weeks' pay, \$3,101.08, in exchange for Ms. Ehlers' agreement to enter into a legal settlement. To receive the settlement amount of \$3,101.08, Ms. Ehlers had to agree to forego a future cause of action against the employer in connection with her separation from the employment. The agreement indicates on its face that the settlement amount was not offered pursuant to the employer's severance pay policy and that Ms. Ehlers was forfeiting her right to severance pay under the severance policy. Ms. Ehlers and Ms. Schramm each signed the Employment Separation Agreement and General Release

form on July 29, 2008. Ms. Ehlers received the \$3,101.08 settlement amount from the employer.

Ms. Ehlers established a claim for unemployment insurance benefits that was effective August 3, 2008. Workforce Development calculated Ms. Ehlers' weekly benefit amount to be \$361.00. Ms. Ehlers received no benefits for the weeks ending August 9, August 16, and August 23, 2008. For the week ending August 30, 2008, Ms. Ehlers reported \$165.00 in wages and received \$286.00 in benefits. For the week ending September 6, 2008, Ms. Ehlers reported \$352.00 in wages and received \$99.00 in benefits. Ms. Ehlers did not receive any benefits for the week ending September 13, 2008 and, thereafter, discontinued her claim for benefits.

On August 6, 2008, Workforce Development mailed a notice of claim concerning Ms. Ehlers to the employer. The notice of claim contained an August 18, 2008 deadline for the employer's response. Workforce Development received the employer's response on August 12, 2008. The employer did not protest the claim for benefits. The employer provided information concerning the vacation pay. The employer indicated that \$2,093.23 had been disbursed to Ms. Ehlers. The employer designated July 29, 2008 through August 14, 2008, as the period to which the vacation pay benefits should be applied for purposes of unemployment insurance benefits eligibility. Because apportioned vacation pay exceeded Ms. Ehlers' weekly unemployment insurance benefit amount for weeks that ended August 9 and August 16, 2008, Ms. Ehlers was ineligible for benefits for those two weeks.

In the employer's August 12, 2008, response to the notice of claim, the employer also provided "severance pay" information. The employer indicated that Ms. Ehlers had received \$3,101.08 in "severance pay, dismissal pay, separation allowance, or wages in lieu of notice" to be applied to the period of August 15 through September 11, 2008.

Because the employer had made a timely designation of the period to which the "severance pay" should be applied, a Workforce Development representative relied upon the information provided by the employer and redetermined Ms. Ehlers unemployment insurance benefit eligibility for the weeks ending August 23, August 30, September 6 and September 13, 2008. Because the apportioned "severance pay" exceeded Ms. Ehlers weekly unemployment insurance benefit amount for each of these four weeks, the Workforce Development representative concluded that Ms. Ehlers was ineligible for benefits for each of those weeks.

REASONING AND CONCLUSIONS OF LAW:

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 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

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.

An individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits which would otherwise be due, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay," or the equivalent, to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a lay off. 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 Ms. Ehlers. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to Ms. Ehlers falls outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay. The legal settlement amount is not deductible from Ms. Ehlers' Unemployment Insurance Benefits under Iowa Code section 96.5(5). Ms. Ehlers is eligible for benefits for the benefit weeks ending August 23, August 30, September 6 and September 13, 2008, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's September 17, 2008, reference 03, decision is reversed. The claimant did not receive severance pay, but instead received a legal settlement amount that is not deductible from her unemployment insurance benefits. The claimant is eligible for benefits for the benefit weeks ending August 23, August 30, September 6 and September 13, 2008, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs