

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

DARLENE J SMYSER  
2707 JONES ST  
SIOUX CITY IA 51104

TELCO TRIAD COMMUNITY CREDIT  
UNION  
1420 TRI VIEW AVE  
SIOUX CITY IA 51103

Appeal Number: 05A-UI-12206-S2T  
OC: 10/23/05 R: 01  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Telco Triad Community Credit Union (employer) appealed a representative's November 29, 2005 decision (reference 02) that concluded the Darlene Smyser (claimant) would not be eligible to receive unemployment insurance benefits for the five-week period ending November 26, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2005. The claimant participated personally. The employer participated by Catherine Beyerink, Chief Executive Officer. Exhibit D-1 was admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's last day of work for the employer was October 25, 2005. The claimant filed a claim for unemployment insurance benefits with an effective date of October 23, 2005. The employer paid the claimant severance pay for the four-week period from October 26 to November 23, 2005. November 24, 2005, was a holiday. The employer paid the claimant vacation pay for the four-week period from November 25 through December 23, 2005.

The claimant's notice of claim was mailed to the employer's address of record on October 28, 2005 and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer signed the notice of claim on November 2, 2005. The claim was not postmarked until November 10, 2005, after the date the notice of claim was due.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified for benefits through November 26, 2005. The administrative law judge concludes she is.

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 claimant received five-weeks of severance pay for the week ending November 26, 2005. Under the provisions of the above Code section the claimant is disqualified from receiving unemployment insurance benefits for the five-week period ending November 26, 2005, due to the receipt of the severance pay.

**DECISION:**

The representative's November 29, 2005 decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits for the five-week period ending November 26, 2005, due to the receipt of severance pay.

bas/kjf