

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD J SLY
Claimant

APPEAL NO. 15A-UI-04691-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINCIPIANT HOTEL COMPANY LC
Employer

OC: 03/08/15
Claimant: Appellant (3)

Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Edward Sly filed a timely appeal from the April 10, 2015, reference 03, decision that denied benefits for the two-week period of March 15-28, 2015, based on an Agency conclusion that Mr. Sly had received or was entitled to receive severance pay that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on June 22, 2015. Mr. Sly did not provide a telephone number for the hearing and did not participate. Rachel Ricketts represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 15A-UI-04690-JTT and 15A-UI-04692-JTT. Exhibits One, Two and Three and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's record of wages reported by the claimant and benefits disbursed to the claimant (DBRO).

ISSUES:

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

Whether the employer made a timely designation of the period to which the severance pay should be applied when determining the claimant's unemployment insurance benefit eligibility.

Whether Workforce Development corrected deducted the severance pay.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Edward Sly was employed by Principiant Hotel Company, L.C., d/b/a Raccoon River Brewing Company, as a full-time, salaried assistant manager and last performed work for the employer on Monday, March 9, 2015. At the time Mr. Sly separated from the employment, the employer agreed to pay Mr. Sly severance pay equal to two weeks' salary, \$1,442.31 in exchange for his remaining in the employment until March 9, 2015. The employer did not require that Mr. Sly waive any rights or enter into any other legal settlement as a condition of receiving the severance pay. The employer paid that severance pay amount to Mr. Sly, minus appropriate tax withholding, in connection with the separation from the employment.

Mr. Sly established a claim for unemployment insurance benefits that was effective March 8, 2015. Workforce Development calculated Mr. Sly's weekly benefit amount to be \$432.00. For the week that ended March 14, 2015, Mr. Sly reported \$144.00 in wages and received \$396.00 in unemployment insurance benefits. For the week that ended March 21, 2015, Mr. Sly reported vacation pay that exceeded his weekly benefit amount and received zero unemployment insurance benefits. For the week that ended March 28, 2015 and the week that ended April 4, 2015, Mr. Sly reported zero wages and received \$432.00 in weekly unemployment insurance benefits.

On March 17, 2015, Workforce Development mailed a notice of claim to the employer concerning Mr. Sly. The notice of claim contained a March 28, 2015 deadline for the employer's response. Workforce Development received the employer's response on March 18, 2015. The employer did not protest the claim for benefits. The employer provided information concerning the \$144.23 in wages the employer had paid to Mr. Sly for work performed in March 9, 2015. The employer provided information concerning the 41.12 hours of vacation pay, \$741.35, but did not designate the period to which the employer wanted the vacation pay to be applied when determining Mr. Sly's weekly benefit amount. The employer provided information concerning the \$1,442.31 in severance pay, but did not indicate designate the period to which the employer wanted the severance pay to be applied when determining Mr. Sly's unemployment insurance benefit eligibility. The employer also did not provide information concerning the number of hours' or days' worth of severance pay.

A Workforce Development claims deputy used the timely information provided by the employer to redetermine Mr. Sly's unemployment insurance benefit eligibility. The claims deputy assigned the \$144.00 in wages to the benefit week that ended March 14, 2015. The claims deputy apportioned the total amount of vacation pay, \$741.35, by 41.12 hours, to arrive at an \$18.02 hourly wage. The claims deputy then apportioned 32 hours of the vacation, \$576.93 rounded to \$577.00 to the four remaining Monday-Friday regular work days in the benefit week that ended March 14, 2015. The combined wages and apportioned vacation pay exceeded Mr. Sly's weekly unemployment insurance benefit amount and reduced his benefit eligibility for that week to zero. The claims deputy apportioned the remaining vacation pay, \$164.35 rounded to \$164.00 to Monday, March 16, 2015. See Appeal Number 15A-UI-04690-JTT.

The claims deputy then went about apportioning the severance pay amount reported by the employer. The claims deputy apportioned \$625.00 of the severance pay to the benefit week that ended March 21, 2015 and concluded that Mr. Sly was not eligible for unemployment insurance benefits for that week. The claims deputy apportioned \$810.00 in severance pay to the week that ended March 28, 2015 and concluded that Mr. Sly was not eligible for benefits for that week. The claims deputy apportioned the remaining \$7.00 in severance pay to the week that ended April 4, 2015.

The claims deputy took the \$1,442.31 severance pay amount and divided that amount the \$18.02 hour wage. The claims deputy then assigned 32 hours of the severance pay to the week that ended March 21, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-23.3(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).

Iowa Admin. Code r. 871-24.13(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.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" 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 evidence in the record indicates that the severance pay the employer paid to Mr. Sly was indeed severance pay within the meaning of the unemployment insurance, rather than money paid as part of legal settlement agreement. Accordingly, the \$1,442.31 in severance pay that Mr. Sly received was deductible from his unemployment insurance benefits.

Iowa Administrative Code Rule 871 - 24.13(1) provides Workforce Development some discretion in apportioning severance pay when the employer does not designate the time period to which the severance should be applied. Unfortunately, the claims deputy has not provided full documentation of their thought process in apportioning the severance pay. The employer provided Workforce Development with clear wage information on the notice of claim to establish that the severance pay amount represented two weeks’ wages. The employer did this by providing the \$144.23 wage amount for eight hours of work on March 9. The employer provided equally useful information concerning the vacation pay. Under the statute and administrative rule, the severance pay should have been apportioned in equal amounts to the 10 Monday-Friday workdays that followed the Monday, March 16, 2015. That was the last day to which vacation pay was apportioned. See Appeal Number 15A-UI-04690-JTT. Thus, four days’ of severance pay, \$577.00 should have been apportioned to the week that ended March 21, 2015. Five days of severance pay, \$721.00, should have been apportioned to the week that ended March 28, 2015. The remaining day of severance pay, \$144.00, should have been apportioned to the week that ended April 4, 2015.

DECISION:

The April 10, 2015, reference 03, decision is modified as follows. The claimant received severance pay that was deductible from his unemployment insurance benefits. The amount of severance pay the claimant received for the weeks that ended March 21 and March 28, 2015, exceeded his weekly unemployment insurance benefit amount. Accordingly, the claimant was not eligible for unemployment insurance benefits for that two week. In addition, the claimant received \$144.00 in severance pay that is deductible from his unemployment insurance benefits for the week that ended April 4, 2015.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs