

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNIFER N HERRINGTON**  
Claimant

**APPEAL 19A-UI-02183-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAUBONSIE MENTAL HEALTH CENTER**  
Employer

**OC: 01/13/19  
Claimant: Respondent (1)**

Iowa Code § 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 27, 2019, (reference 03) unemployment insurance decision that allowed benefits based upon a determination that claimant did not receive severance pay, but instead payment in exchange for certain actions in a payment agreement. The parties were properly notified of the hearing. A telephonic hearing was held on April 16, 2019. The claimant, Jennifer Herrington, participated along with witness Ann Davison; Steven Krohn represented the claimant. The employer, Waubonsie Mental Health Center, participated through witnesses Katie Shaw, Community Support Specialist Supervisor; Koreen Dow, Business Office Manager; and Brian T. Shotwell, Executive Director; and Thomas E. Stamets represented the employer.

Claimant's Exhibits C-1 through C-7 and Employer's Exhibits 1 through 12 were received and admitted into the record. The administrative law judge notes that Claimant's Exhibit C-6 was received over a hearsay objection.

**ISSUE:**

Did the claimant receive severance pay?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment on January 2, 2019. In connection with her separation, claimant and the employer completed an Agreement Related to Termination of Employment and Severance Pay. (Employer's Exhibit 12) Under this agreement, claimant received a single payment of \$28,308.30, which is equal to thirty weeks' pay at her rate of pay of \$2,598.00 every two weeks, less all applicable deductions and withholdings. In order to receive these funds, claimant was required to sign the Agreement under which she waived numerous rights in reference to the employer, and she released numerous claims she may have against the employer. (Employer's Exhibit 12, page 1, para. 3)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not receive severance pay.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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. 871-24.13(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.

Iowa Admin. Code r. 871-24.13(4)b provides:

(4) *Nondeductible payments from benefits.* The following payments are not considered as wages and are not deductible from benefits:

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

Iowa Admin. Code r. 871-24.18 provides:

**871—24.18(96) Wage-earnings limitation.** An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. It has traditionally 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 it and the claimant. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to the claimant would fall outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code section 96.5(5).

Since claimant is expected to agree to the terms of the Agreement Related to Termination of Employment and Severance Pay, payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant, but was for a contractual obligation. Payment in consideration of that obligation is not considered wages. Therefore, the agreement consideration should not be deducted from benefits. Benefits are allowed effective January 13, 2019.

**DECISION:**

The February 27, 2019, (reference 03) unemployment insurance decision is affirmed. The claimant did not receive severance pay, and the consideration under the Agreement was correctly not deducted from benefits.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn