

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLAN G PITMAN
Claimant

EATON CORPORATION
Employer

APPEAL 16A-UI-06310-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/16
Claimant: Appellant (1)

Iowa Code § 96.5(5) Severance Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 1, 2016, (reference 02) unemployment insurance decision that notified him that severance pay would be deducted from his unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2016. Claimant participated. Employer did not participate.

ISSUE:

Was the severance pay deductible and if so, was it deducted for the correct period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment on April 22, 2016. He was given a written agreement that laid out two separate severance payments that could be made to him; 2A and 2B. The first, 2A indicated he would be paid standard severance in the amount of \$12,728.85 whether he signed the agreement and general release or not. If the claimant did sign the general release agreement then he would be entitled to an additional payment, 2B, of \$12,728.82. The claimant signed the agreement and was paid both sums. The claimant's standard severance pay represents roughly eight weeks of regular wages at claimant's normal rate of pay.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, which was correctly deducted from benefits.

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.
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" to include a 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 payment amount found at 2B of the release agreement in this case arose out of an attempt by the employer to resolve legal matters, or potential legal matters, between itself and the claimant. Under the Agency's historic interpretation of "severance pay," that payment amount in 2B 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 her Unemployment Insurance Benefits under Iowa Code § 96.5(5).

The same cannot be said for the payment made pursuant to 2A of the agreement. That sum, representing standard severance wages for the claimant, would have been paid to him whether he signed the release agreement or not. The claimant was not required to do anything in order to receive the payment. It does represent severance pay under the definition set out above and is thus deductible from the claimant's unemployment insurance benefits.

The administrative law judge concludes that eight weeks of severance for the period ending June 18, 2016 and paid under 2A of the general release agreement was deductible from the claimant's unemployment insurance benefits. The payment made under 2B of the general release agreement 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 payment made to the claimant under 2B is consideration that should not be deducted from unemployment insurance benefits.

DECISION:

The June 1, 2016, reference 02, decision is affirmed. The claimant was paid eight weeks of severance pay that was deductible from his unemployment insurance benefits. Benefits are allowed thereafter, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs