

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

TAMMY A SCHUBERT
945 N 12TH ST
ESTHERVILLE IA 51334

AZDAK TRANSPORT INC
PO BOX 2820
SIOUX CITY IA 51006

Appeal Number: 05A-UI-12270-HT
OC: 10/23/05 R: 01
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(5) - Severance

STATEMENT OF THE CASE:

The claimant, Tammy Schubert, filed an appeal from a decision dated November 28, 2005, reference 01. The decision disqualified her from receiving unemployment benefits for the two-week period ending November 5, 2005. After due notice was issued, a hearing was held by telephone conference call on December 21, 2005. The claimant participated on her own behalf. The employer, Azdak Transport, participated by Office Manager Kenneth Billings.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tammy Schubert was employed by Azdak from May 6 until October 26, 2005. She was a full-time employee salaried at \$450.00 per week.

On October 21, 2005, it was mutually agreed that things were "not working out." The employer paid the claimant for two weeks' wages beginning October 23 through November 4, 2005.

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.

The claimant received the equivalent of two weeks' wages after her separation date of October 21, 2005. Under the provisions of the above Code section, she would be disqualified from receiving benefits for the two-week period ending November 5, 2005, due to the receipt of severance pay.

DECISION:

The representative's decision of November 28, 2005, reference 01, is affirmed. Tammy Schubert is disqualified from receiving benefits for the two-week period ending November 5, 2005.

bgh/kjw