

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN B CARLSON
Claimant

APPEAL NO: 09A-UI-08771-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAUER-DANFOSS (US) CO
Employer

OC: 02/08/09
Claimant: Appellant (2)

Section 96 .5-5 – Severance Pay

STATEMENT OF THE CASE:

Allen B. Carlson (claimant) appealed a representative's June 16, 2009 decision (reference 01) that concluded he was not eligible to receive benefits for the weeks ending February 14 through April 11, 2009. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and no one appeared at the hearing on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the payment the claimant received for entering into a settlement agreement with the employer a deductible payment from the claimant's weekly benefit amount?

FINDINGS OF FACT:

The claimant's employment with the employer ended on January 13, 2009. The claimant signed a settlement agreement with the understanding he would only receive an additional payment of eight weeks of payments if he signed the settlement agreement. The claimant signed the settlement agreement on January 13, 2009. (Claimant Exhibit A.) By signing the settlement agreement the claimant received 11 weeks of additional payments, instead of just three weeks.

The claimant did not establish a claim for benefit until the week of February 8, 2009. The claimant did not report any severance pay for the weeks ending February 14 through April 11, 2009, because he understood the settlement payment he received would not be deducted from his weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

Severance pay must be deducted from a claimant's maximum weekly benefit amount. Iowa Code section 96.5-5. A payment after a separation that is conditioned upon execution of a

release or waiver of claims is not "severance pay" as contemplated by Iowa Code section 96.5-5. It is more aptly characterized as consideration given by the employer to the claimant for waiver of possible causes of action against the employer and not simply a payment for prior years of service to the employer. At the hearing, Claimant's Exhibit A shows that the additional eight weeks of payment the claimant received was in exchange for the claimant's signing the release. Thus it cannot be considered severance pay that is deductible from the claimant's unemployment insurance benefits. This means for the weeks ending February 14 through April 11, 2009, the claimant is eligible to receive benefits and there is no "additional" payment that should be deducted from these weeks.

DECISION:

The representative's June 16, 2009 decision (reference 01) is reversed. The claimant's eight additional payments as the result of signing a Separation Agreement and Release of Claims do not constitute a severance payment and are not deductible for unemployment insurance purposes. Therefore, the claimant is eligible to receive benefits for the weeks ending February 14 through April 11, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs