

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAUREN SEVERIDT

Claimant

APPEAL NO: 09A-UI-11635-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSHALLTOWN COMPANY

Employer

OC: 02/22/09

Claimant: Appellant (2)

Iowa Code § 96.5-5 - Receipt of Severance

STATEMENT OF THE CASE:

Lauren Severidt (claimant) appealed an unemployment insurance decision dated August 11, 2009, reference 03, which held that she was not eligible for unemployment insurance benefits for the 19-week period ending July 11, 2009 due to the receipt of severance pay from Marshalltown Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2007. The claimant participated in the hearing. The employer participated through Kris Delano, Human Resources Director. Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant received severance pay, or its equivalent, in connection with her separation from the employment; and if so, whether Iowa Workforce Development appropriately determined the period to which severance pay should be applied.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was separated from employment on February 20, 2009. After her separation from employment, she received severance pay in the amount of \$17,635.38. The severance was paid in a lump sum during the week ending April 4, 2009. The employer paid the severance payment in return for the claimant's signature on a separation agreement.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the severance pay was properly deducted. For the reasons that follow, the administrative law judge concludes the severance pay was not deducted for the correct period.

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.

871 IAC 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).

871 IAC 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 § 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 § 96.5(5).

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay," or the equivalent, 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 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 falls outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay. The legal settlement amount is not deductible from the claimant's unemployment insurance benefits under Iowa Code § 96.5(5).

The claimant qualifies for benefits as of March 7, 2009, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The unemployment insurance decision dated August 11, 2009, reference 03, is reversed. The claimant did not receive severance pay, but instead received a legal settlement amount that is not deductible from her unemployment insurance benefits. The claimant is eligible for benefits as of March 7, 2009, provided she is otherwise eligible. The employer's account may be charged.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs