

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS DELONG**

Claimant

**APPEAL NO. 09A-UI-08603-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBL FINANCIAL GROUP INC**

Employer

**OC: 02/15/09**

**Claimant: Appellant (2)**

Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Dennis DeLong filed a timely appeal from the June 10, 2009, reference 02, decision that denied benefits for the twelve-week period of March 8, 2009 through May 30, 2009 based on the conclusion that Mr. DeLong had received severance pay for those weeks that exceeded his weekly benefit amount. After due notice was issued, a hearing was held on July 1, 2009. Mr. DeLong participated. Dawn Hannum, Human Resources Specialist, represented the employer. Exhibit A and Department Exhibits D-1 through D-4 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and wages reported by the claimant. The hearing in this matter was consolidated with the hearing in Appeal Numbers 09A-UI-08602-JTT and 09A-UI-08604-JTT.

**ISSUES:**

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any severance pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any severance pay should be applied.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dennis DeLong was employed by FBL Financial Group, Inc., as a full-time fleet administrator from October 2001 until February 11, 2009, when the employer laid him off. Mr. DeLong had last performed work for the employer on January 28, 2009 but the effective separation date was February 11, 2009.

At the time Mr. DeLong separated from the employment, he had accrued but not yet used, 17.5 days of vacation pay benefits. The gross dollar value of the vacation pay benefit was

\$3,933.76. The employer paid Mr. DeLong the appropriate net amount on February 18, 2009 via direct deposit.

In connection with Mr. DeLong's separation from the employer, Mr. DeLong and the employer executed a Severance Agreement and General Release document. Under the agreement, Mr. DeLong would receive \$29,226.72—the equivalent of six months' pay—in exchange for his agreement to release the employer from liability or potential liability for any cause of action in connection with the separation. Mr. DeLong's receipt of the lump sum payment was conditioned upon his execution of the release. The employer paid Mr. DeLong the appropriate net amount on February 10, 2009 via direct deposit.

Mr. DeLong established a claim for unemployment insurance benefits that was effective February 15, 2009 and received benefits. For the week that ended February 21, 2009, Mr. DeLong reported vacation wages that were equal to or exceeded \$999.00 and received no benefits. For the week ending February 28 through the week ending June 6, 2009, Mr. DeLong reported no wages and received \$375.00 in weekly benefits. For the weeks ending June 13, 20, and 27, 2009, Workforce Development authorized \$375.00 in weekly benefits, but withhold those benefits (\$1,125.00) as an offset against what the Agency believed at that time was an overpayment of benefits. The total benefits approved were \$5,625.00. The total amount disbursed was \$4,500.00.

On February 18, 2009 Workforce Development mailed a Notice of Claim concerning Mr. DeLong to the employer's last-known address of record. The Notice contained a March 2, 2009 deadline for the employer's protest or other response. On February 23, 2009, Human Resources Specialist Joelle Knowler completed the employer's information on the Notice of Claim form. The employer faxed the Notice of Claim back to Workforce Development on February 23, 2009 and the Agency received the document on February 23, 2009. The employer did not protest the claim for benefits.

In the space provided for vacation pay information, the employer indicated that \$3,933.76 in vacation pay had been disbursed and indicated that this was the equivalent of 17.5 days' wages. The employer indicated that the period to which the vacation pay benefits should be applied when redetermining unemployment insurance benefits was February 12, 2009 through March 9, 2009. The beginning date of this period was the first day after Mr. DeLong's separation date.

In the space provided for severance pay information, the employer indicated that \$9,430.20 in severance pay had been disbursed. This amount was erroneous. The employer indicated that the period to which the severance pay should be applied was March 9, 2009 through June 1, 2009. The employer indicates that the end date was also erroneous and that the employer intended for the end date to be six months after the beginning date to correspond with the six-months' wages paid to Mr. DeLong under the Severance Agreement and General Release document.

A Workforce Development representative relied upon the information provided by the employer to redetermine Mr. DeLong's unemployment insurance benefits eligibility. The amount of vacation pay apportioned to the week ending February 14, 2009 was \$561.98. Because the week fell before the effective date of Mr. DeLong's claim for unemployment insurance benefits, the vacation pay apportioned to the week ending February 14, 2009 had no effect on Mr. DeLong's eligibility for unemployment insurance benefits. The amount of vacation pay apportioned to the weeks ending February 21, 28 and May 7, 2009 was \$1,123.95. Because this amount exceeded Mr. DeLong's weekly unemployment insurance benefit amount, the

apportioning of the vacation pay reduced Mr. DeLong's eligibility for benefits during those weeks to zero. Because Mr. DeLong had already received benefits for the weeks ending February 28 and March 7, the Workforce Development representative concluded Mr. DeLong had been overpaid benefits for those two weeks.

The Workforce Development representative also relied upon the severance pay information provided by the employer to redetermine Mr. DeLong's unemployment insurance benefit eligibility for the affected weeks. The representative apportioned \$785.85 in severance pay to each of the weeks in the 12-week period of March 8, 2009 through May 30, 2009. Because this amount exceeded Mr. DeLong's weekly unemployment insurance benefit amount, the apportioning of the purported severance pay reduced Mr. DeLong's eligibility for benefits during the affected weeks to zero. Because Mr. DeLong had already received benefits for those weeks, the Workforce Development representative concluded Mr. DeLong had been overpaid benefits for those weeks.

### **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.

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 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 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 itself and Mr. DeLong. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to Mr. DeLong 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).

**DECISION:**

The Agency representative's June 10, 2009, reference 02, decision is reversed. The claimant received a legal settlement, not severance pay. The legal settlement amount is not deductible from the claimant's unemployment insurance benefits. The claimant was eligible for

unemployment insurance benefits for the 12-week period of March 8, 2009 through May 30, 2009, provided he was otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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