

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE K TSCHUDI

Claimant

APPEAL NO. 09A-UI-11219-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS TV CO (KCRG)

Employer

OC: 02/08/09

Claimant: Appellant (2)

Section 96.5-5 - Severance Pay Deduction for Correct Period

STATEMENT OF THE CASE:

Michelle Tschudi filed a timely appeal from a representative's decision dated July 28, 2009, reference 01, which held her not eligible to receive unemployment insurance benefits for six weeks ending April 18, 2009, finding that the claimant was receiving or entitled to receive severance pay which equaled or exceeded her weekly benefit amount. After due notice, a telephone conference hearing was scheduled for and held on August 20, 2009. Ms. Tschudi participated personally. The employer participated by Ms. Shonna Woods, Human Resource Manager. Exhibits A, B and D-1 were received into evidence.

ISSUE:

The issue is whether the claimant received disqualifying severance pay and whether the severance pay was deducted for the correct period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on February 10, 2009 and received severance pay as part of a "severance package" in the amount of \$2,940.00 based upon a rate of pay of \$12.25 per hour. The employer did designate the period of time to which the severance pay was to be applied as March 5, 2009 through April 16, 2009. Subsequently the employer provided notification to Iowa Workforce Development that the correct dates of the severance pay in the \$2,940.00 was to be applied was from March 23, 2009 through April 3, 2009.

Upon separation from employment Ms. Tschudi received the amount of \$2,940.00 in consideration of her agreement to release and settle all claims against the company for any cause of action that may have accrued during her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the severance pay was deducted for an incorrect period.

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 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.

Since the claimant was expected not to bring suit against the company for any legal cause of action that may have taken place during the period of her employment in consideration for the

\$2,940.00 provided by the company at or near the time of her separation, the amount is not considered to be wages but payment in consideration for a contractual obligation. Therefore, the consideration the claimant received not to bring suit against the company should not be deducted from benefits. (See Exhibit B).

DECISION:

The representative's decision dated July 28, 2009, reference 01, is reversed. The claimant did not receive disqualifying severance pay. The claimant is eligible to receive unemployment insurance benefits for the six weeks ending April 18, 2009, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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