

**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**

**EDWARD J FOREHLE  
3216 FRANKLIN AVE  
DES MOINES IA 50310 5131**

**BUILDERS KITCHEN & SUPPLY  
130 E 3<sup>RD</sup> ST  
DES MOINES IA 50309**

**Appeal Number: 06A-UI-05933-H2T  
OC: 04-02-06 R: 02  
Claimant: Appellant (5)**

**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 Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 31, 2006, reference 02, decision that deducted severance pay from the claimant's claim for unemployment insurance benefits. After due notice was issued, a hearing was held on June 27, 2006. The claimant did participate. The employer did participate through Bruce Lefkow, President. Department's Exhibit D-1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on March 31, 2006 and received severance pay in the amount of \$2,507.50 based upon a rate of pay at \$14.75 per hour. The employer did designate the period of time to which the severance pay was to be applied as from April 1, 2006 to May 1, 2006.

The claimant was paid a total of 170 hours of severance pay or \$2,507.50. He was also paid for 24 hours of vacation pay or \$354.00. He was also paid for 58 hours of unused sick leave or \$855.50. The claimant filed a claim for benefits with an effective date of April 2, 2006. The claimant's vacation pay and severance pay amount to 194 hours of time or a total of \$2,861.50. For an individual who normally works a 40-hour workweek, the claimant has received severance or vacation for a total of almost five weeks, or from the week ending April 8 through the week ending May 6, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the severance pay was deducted for the correct 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 paragraphs "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.

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.

The claimant received payment for almost five weeks of severance or vacation pay. He was not entitled to receive unemployment insurance benefits through the week ending May 6, 2006. Therefore, the entire amount of severance pay was correctly deducted for the week ending May 6, 2006.

DECISION:

The May 31, 2006, reference 02, decision is modified in favor of the respondent. The severance pay should have been deducted for the period through the week ending May 6, 2006.

tkh/cs