

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA R AMOS
Claimant

GLOBE GAZETTE
Employer

APPEAL 17A-UI-12047-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/05/17
Claimant: RESPONDENT (1)**

Iowa Code § 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

The employer filed an appeal from the November 16, 2017, (reference 01) unemployment insurance decision that determined she had not been paid any severance payment that was deductible from her unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2017. Claimant participated. Employer participated through Sheri Karasek, Regional Human Resources Director.

ISSUE:

Did the claimant receive severance pay that is deductible from her unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from her employment on October 13, 2017. In order to receive any type of 'severance' payment she was required to sign a general release of claims against the employer. She did sign the release and received the payment of approximately \$16,573.00. If the claimant had refused to sign the release of claims, she would not have been paid the 'severance' payment.

REASONINGS AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. The Appeals Bureau 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 of an attempt by the employer to resolve legal matters, or potential legal matters, between itself and the claimant. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to the claimant 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 § 96.5(5).

Since the claimant agreed to the terms of the general release and agreement, payment was not for a service provided in exchange for wages or as a way to ease the loss of income after a separation through no fault of the claimant, but was for a contractual obligation. Payment in consideration of that obligation is not considered wages. Therefore, the payment made to the claimant is consideration that should not be deducted from unemployment insurance benefits. The entire amount of "severance" pay is not deductible from her unemployment insurance benefits.

DECISION:

The November 16, 2017, (reference 01) decision is affirmed. The payment made to claimant was not severance pay that must be deducted from her unemployment insurance benefits.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs