

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SUSAN A GRUBER**  
Claimant

**JACOBSEN & COMPANY LLP**  
Employer

**APPEAL 18A-UI-06033-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/22/18**  
**Claimant: Respondent (3)**

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Iowa Code § 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 21, 2018, (reference 04) unemployment insurance decision that denied benefits based upon a determination that claimant received severance pay which entitled her to a reduced benefit amount for the week ending June 16, 2018. The parties were properly notified of the hearing. A telephone hearing was held on June 15, 2018. The claimant, Susan A. Gruber, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Jacobsen & Company, L.L.P., participated through David Jacobsen, CPA/Partner. The administrative law judge marked the employer's Statement of Protest as Exhibit D-1 and admitted it into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on or about April 27 2018. Upon her separation, claimant received severance pay in the amount of \$3,583.34, equivalent to 173.28 hours or 21.7 days, based upon a rate of pay at \$20.68 per hour. There was no requirement that she sign an agreement waiving certain rights to receive the pay. Jacobsen filled out the Statement of Protest incorrectly and mistakenly indicated that claimant received 31 days of severance. He was attempting to convey that she received the equivalent of one month's salary as severance.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's severance pay has not been correctly deducted from benefits.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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. 871-24.13(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.

Iowa Admin. Code r. 871-24.18 provides:

**871—24.18(96) Wage-earnings limitation.** An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

The Unemployment Insurance Handbook at page 22 provides:

#### **FULLY DEDUCTIBLE FROM THE BENEFIT PAYMENT**

Each dollar the individual earns reduces their benefit payment by one dollar (dollar-for-dollar).

- Vacation pay and paid time off
- Severance pay
- Pension, retirement, annuity, or any other similar period payment
- Workers' Compensation (temporary total disability)
- Paid excused leave (funeral or personal leave)

Example: An individual's WBA is \$400 and they receive a \$370 vacation payout for the week they are claiming.

- $\$400 - \$370 = \$30$ . \$30 is the payment amount for the week

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. It has traditionally 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. In this case, claimant was not required to sign anything or agree to waive any rights or potential causes of action in exchange for receiving the amount. Therefore, it is properly considered as severance pay.

The issue in this case is the calculation of severance pay. Claimant received the equivalent of 21.7 days of pay through the severance. This would take claimant through May 29, 2018. Claimant would be eligible, potentially, for a reduced benefit amount for the week ending June 2. Claimant would be eligible for benefits effective June 4, provided she is otherwise eligible. As claimant received no severance pay affecting the week ending June 16, 2018, full benefits are allowed that week.

**DECISION:**

The May 21, 2018, (reference 04) unemployment insurance decision is modified in favor of claimant/respondent. The severance pay was not correctly deducted. Benefits are allowed for the one-week period ending June 16, 2018, provided claimant is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn