

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELE L MOLLE**  
Claimant

**APPEAL NO. 15A-UI-00236-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SLB IOWA LLC**  
Employer

**OC: 11/23/14**  
**Claimant: Respondent (3/R)**

Iowa Code Section 96.5(5) – Severance Pay  
Iowa Code Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 8, 2015, reference 04, decision that held that the payment issued by the employer to the claimant in connection separation agreement was not severance pay within the meaning of the law and not deductible from the claimant's unemployment insurance benefits. After due notice was issued, a hearing was held on January 29, 2015. Claimant Daniele Molle participated. Karen Beard represented the employer. The parties waived formal notice on the severance pay issue. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and Two into evidence.

**ISSUES:**

Whether Ms. Molle received severance pay or the equivalent that is deductible from her unemployment insurance benefits.

Whether Ms. Molle received vacation 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: Daniele Molle was employed by SLB Iowa, L.L.C., d/b/a Panera Bread of Iowa, as a full-time office assistant until November 24, 2014 when the employer severed the employment relationship. In connection with Ms. Molle's separation from the employment, the employer agreed to pay Ms. Molle the equivalent of five-weeks' wages of \$2400, in exchange for her written agreement to waive any and all cause of action against the employer and release of the employer from all liability that might arise in connection with her separation from the employment. The written agreement, nine pages in total, also included confidentiality provisions, a non-compete provision, and sundry other provision to bind Ms. Molle from taking any action adverse to the employer. Ms. Molle signed the document and the employer paid Ms. Molle the \$2400.

Ms. Molle established a claim for unemployment insurance benefits that was effective November 23, 2014 and received benefits totaling \$842 for four out of five weeks.

When Ms. Molle made her weekly claim for the week ending December 6, 2014, she erroneously reported \$999 in vacation pay. Ms. Molle received no vacation pay from the employer in connection with her separation from the employer.

**REASONING 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. 871-23.3(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).

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.

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 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 Ms. Molle. Under the Agency's historic interpretation of "severance pay," the settlement amount issued to Ms. Molle falls outside the definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and is not deductible from her Unemployment Insurance Benefits under Iowa Code Section 96.5(5).

Iowa Code § 96.5-7 provides:

An individual shall be disqualified for benefits: ...

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

The claimant received no vacation pay in connection with her separation from the employment. Thus, there would be no vacation pay to deduct from the claimant's benefit eligibility for the week ending December 6, 2014 or any other week.

**DECISION:**

The January 8, 2015, reference 04, decision is modified to include a ruling on the vacation pay issue. The claimant did not receive severance pay or the equivalent that could be deducted from unemployment insurance benefits. Instead, the claimant received a legal settlement amount that is not deductible from unemployment insurance benefits. The claimant did not receive vacation pay in connection with the separation from employment and there is no

vacation pay to deduct from benefits during the week ending December 6, 2014 or any other week. This matter is remanded to the Benefits Bureau for redetermination of the claimant's eligibility for benefits for the week ending December 6, 2014 in light of the claimant's erroneous report of \$999 in vacation pay for that week.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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