

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRGINIA R HOPKINS
Claimant

APPEAL NO. 14A-UI-09874-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACT INC
Employer

OC: 04/27/14
Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Virginia Hopkins filed a timely appeal from the September 16, 2014, reference 03, decision that denied benefits for the four weeks ending August 16, 2014, based on an Agency conclusion that she had received vacation pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on October 13, 2014. Ms. Hopkins participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 14A-UI-09873-JTT and 14A-UI-09875-JTT. Exhibits A and B and Department Exhibits D-1 through D-5 were received into evidence.

ISSUES:

Whether Ms. Hopkins received vacation pay that was deductible from her unemployment insurance benefit eligibility for the four weeks ending August 16, 2014.

Whether the employer made a timely designation of the period to which the vacation pay should be applied when determining Ms. Hopkins' eligibility for unemployment insurance benefits.

Whether Workforce Development appropriately apportioned vacation pay when redetermining Ms. Hopkins' eligibility for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Virginia Hopkins established a claim for unemployment insurance benefits that was effective the week that started April 27, 2014, in connection with an April 28, 2014 separation from her professional position at ACT, Inc. Ms. Hopkins has received unemployment insurance benefits totaling \$3,392.00. Ms. Hopkins did not receive any benefits for the week ending May 3, 2014. Ms. Hopkins received \$424.00 in benefits for the week ending May 10, 2014. Ms. Hopkins did not receive any benefits for the week ending May 17, 2014. Ms. Hopkins received \$424.00 in benefits for each of the seven weeks between May 18, 2014 and July 5, 2014. Ms. Hopkins did not receive any benefits for the six-week period between July 6, 2014 through August 16, 2014.

During the week that ended July 26, 2014, Ms. Hopkins reported \$750.04 in wages. Ms. Hopkins' claim for benefits discontinued after the benefit week that ended August 16, 2014.

At the time Ms. Hopkins separated from ACT, Ms. Hopkins had accrued, but not yet used vacation pay benefits totaling \$15,404.96. The employer paid that amount, minus tax withholdings, on or about May 16, 2014, and the appropriate net amount was direct deposited in Ms. Hopkins' bank account.

On May 5, 2014, Iowa Workforce Development mailed a notice of claim to the employer. The notice of claim contained a May 15, 2014 deadline for the employer's response. Workforce Development received the employer's response on May 14, 2014. The employer included information concerning vacation pay, as follows: "\$15,404.96 allocated 07/22/14 to 8/15/14 representing 19 days and 153 hours pay." A Workforce Development claims deputy used the information provided by the employer to redetermine Ms. Hopkins' unemployment insurance benefit eligibility by apportioning the vacation pay amount over the four benefit weeks designated by the employer. Those benefit weeks were the weeks ending July 26, August 2, August 9 and August 16, 2014. For each of those weeks, the apportioned vacation pay amount far exceeded Ms. Hopkins' weekly unemployment insurance benefit amount.

REASONING AND CONCLUSIONS OF LAW:

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.

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 evidence in the record establishes that Ms. Hopkins did indeed receive vacation pay that was deductible from her unemployment insurance benefits. The employer made a timely designation of the period to which the vacation pay should be apportioned when determining Ms. Hopkins unemployment insurance benefits eligibility. Accordingly, under the statute, the employer's designation of the period controls. Ms. Hopkins was not eligible for unemployment insurance benefits for the weeks ending July 26, August 2, August 9 and August 16, 2014, because the apportioned vacation pay amount exceeded Ms. Hopkins' weekly unemployment insurance benefit amount. The administrative law judge notes that the claimant did not receive any unemployment insurance benefits for any of the four weeks in question.

DECISION:

The claims deputy's September 16, 2014, reference 03, decision is affirmed. The claimant received vacation pay that was deductible from her unemployment insurance benefits during the four-week period of July 20, 2014 through August 16, 2014. Because the apportioned vacation pay exceeded the claimant's unemployment insurance benefit amount during each of those weeks, the claimant is not eligible for benefits for that four-week period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs