

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY A DELLACA
Claimant

APPEAL NO. 10A-UI-04614-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04-19-09
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 5, 2010, reference 01, decision that deducted vacation pay from her unemployment insurance benefits. After due notice was issued, a hearing was held on May 10, 2010. The claimant did participate. The employer did not participate as the person who called in to participate in the hearing did not answer the telephone when called by the administrative law judge to begin the hearing. Department's Exhibit D-1 was entered and received into the record. Claimant's exhibit A was entered and received into the record.

ISSUE:

Was the vacation pay deducted for the correct period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from her employment in 2009 and thereafter received payment from her employer for unused paid time off.

At hearing the claimant provided information that the leave she was paid when her employment was ended was not truly vacation leave, but was classified by the employer as "paid time off" (PTO). Under the employer's policy, PTO may be used for any reason, vacation, illness, or no reason at all. Once an employee runs out of or uses up all of their PTO, even if they later become ill, they are not afforded any vacation time or sick time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay was incorrectly deducted from the claimant's unemployment insurance benefits.

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.

871 IAC 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 PTO the claimant received after her separation was available for her use for any purpose including sick leave, personal reasons or the traditional vacation time. Under these circumstances the administrative law judge cannot conclude that it is vacation time which must be deducted from the claimant's unemployment insurance benefits. Because the leave could be used for any reason, including sick leave which is explicitly non-deductible, the administrative law judge concludes that the leave should not have been characterized as vacation pay, but as PTO and was not deductible. Thus, no PTO should have been deducted from the claimant's unemployment insurance benefits.

DECISION:

The March 5, 2010, reference 01, decision is reversed. The PTO pay was incorrectly deducted from the claimant's unemployment insurance benefits.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs