

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA M JONES**  
Claimant

**APPEAL NO: 06A-UI-09196-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**  
Employer

**OC: 08/13/06 R: 04  
Claimant: Appellant (4)**

Section 96.5-5 – Deductible Payments

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 8, 2006, reference 01, that concluded she was ineligible to receive unemployment insurance benefits for the three weeks ending September 2, 2006, due to the receipt of severance pay. A telephone hearing was held on September 27, 2006. The claimant participated in the hearing. Judy Soppe participated in the hearing on behalf of the employer with a witness, Kay Poston. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

**FINDINGS OF FACT:**

The claimant worked for the employer from May 27, 1987, through July 19, 2006. The claimant's weekly wage while employed was \$469.44 based on 24 hours of work per week. After her separation from employment, the claimant received severance pay totaling \$1,721.28 for 88 hours, which was intended to cover the period from July 19, 2006, through August 15, 2006. The claimant also was paid vacation pay totaling \$2,279.71 for 116.55 hours, which was intended to cover the period from August 16 through September 5, 2006.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 13, 2006. Her weekly benefit amount was determined to be \$260.00. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer designated the period from July 19, 2006, through August 15, 2006, as the period to which the severance pay was to apply and August 16 through September 5, 2006, as the period to which the vacation pay was to apply. The employer applied the severance pay based on 24 hours of pay per week and the vacation pay based on 40 hours of pay per week.

The claimant filed weekly claims for the weeks ending August 19, August 26, September 2, September 9, and September 16. She mistakenly reported \$176.00 in vacation pay for the week ending August 19 and was paid \$84.00 in benefits. She did not report any payments during the week ending August 26 and was paid \$260.00 in benefits. She mistakenly reported \$613.00 in wages for the week ending September 2 and did not receive benefits. She mistakenly reported \$235.00 in vacation pay for the week ending September 9 and was paid \$25.00 in benefits but the benefits were kept to satisfy an overpayment. She mistakenly

reported \$176.00 in vacation pay for the week ending September 16 and was paid \$84.00 in benefits but the benefits were kept to satisfy an overpayment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant received severance pay deductible from her unemployment insurance benefits.

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which she claims unemployment insurance benefits and has severance pay or vacation pay attributable to the same week. Iowa Code section 96.5-5. Employer are permitted to designate the period to which the severance pay and vacation pay are attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1).

In this case, the claimant received severance pay and the employer timely designated the period to which the severance pay was attributable as July 19 to August 15, 2006, and the vacation pay was attributable as August 16 through September 5, 2006. There is nothing unreasonable about this designation, although the employer's designation complicates things by deducting the severance pay on the basis of the claimant's workweek of 24 hours while her vacation paid was deducted based on 40 hours per week.

The Agency applied the vacation pay first, but the rule provides that the employer's designation controls the order in which payments should be applied. 871 IAC 24.13(1). This means all but 16 hours of severance pay (\$312.96) had been exhausted before the claimant filed for unemployment insurance benefits. This remaining severance pay and 24 hours of vacation pay (\$469.44) must be applied to the week ending August 19 (total amount \$782.40), which means the claimant was not eligible for benefits for that week. The claimant had vacation pay of \$782.40 per week attributable to the weeks ending August 26 and September 2, 2006, and she was ineligible for benefits for those two weeks. The remaining \$246.00 is attributable to the week ending September 9, 2006, which means the claimant was eligible for \$14.00 in benefits for the week.

**DECISION:**

The unemployment insurance decision dated the September 8, 2006, reference 01, is modified in favor of the claimant. The claimant is ineligible to receive unemployment insurance benefits for the weeks ending August 13 through September 2, 2006, due to the receipt of severance pay. She was entitled to \$14.00 in benefits for the week ending September 9, 2006.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw