

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANN M TOMANEK-CHALKLEY
Claimant

APPEAL NO. 14A-UI-10409-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/23/14
Claimant: Appellant (1)

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant, Ann Tomanek-Chalkley, appealed an unemployment insurance decision dated September 24, 2014, reference 02, that concluded she was ineligible for benefits for the four weeks ending April 19, 2014, due to the receipt of vacation pay. A telephone hearing was held on October 29, 2014. The parties were properly notified about the hearing. Tomanek-Chalkley participated in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer. Exhibits One and A were admitted into evidence at the hearing.

ISSUE:

Did Ann Tomanek-Chalkley receive deductible vacation pay and was it deducted correctly?

FINDINGS OF FACT:

Ann Tomanek-Chalkley worked for the employer through February 28, 2014. She was working 24 hours per week in the Urology Department at a rate of pay of \$22.62 per hour.

After her separation from employment, Tomanek-Chalkley was paid \$6,514 for 288 hours of unused vacation. This was paid in a lump sum on March 13, 2014.

Tomanek-Chalkley filed a new claim for unemployment insurance benefits with an effective date of March 23, 2014. Her weekly benefit amount was determined to be \$354. Tomanek-Chalkley did not report the vacation pay because it was paid out in a lump sum prior to her application for benefits.

The employer responded to the notice of claim within 10 calendar days of the date that it was mailed to the employer. In its response, the employer reported it had paid Tomanek-Chalkley \$6,514.56 for 288 hours of unused vacation. The employer designated the period from March 3 through May 23, 2014, as the period to which the vacation pay was to apply. The calculation was based on taking 24 hours per week and dividing it by five to figure out the number of hours per workday (4.8 hours) and then dividing that into 288 hours to calculate the number of days of vacation (60 days) for the period after the last day of work.

The Agency issued a decision on September 24, 2014, reference 02, that concluded Tomanek-Chalkley was ineligible for benefits for the period from March 23 through April 19, 2014, due to the receipt of vacation pay. The employer did not appeal this decision.

The Agency's calculation divided 8 hours into the 288 to determine the number of days of vacation received as 36 days. The weekly rate was determined to be \$904.80. The Agency then attributed \$904.80 per week to the seven weeks from March 3 through April 19, 2014, and the remaining day of vacation \$180.96 to the week ending April 26, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law provides that vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. Iowa Code § 96.5-7. While the claimant argues that the pay was not for the period after her employment ended, the law is clear and must be applied in this case.

In this case, Tomanek-Chalkley received vacation pay and the employer timely designated the period to which the pay was attributable as March 3 through May 23, 2014. The Agency converted the vacation pay using the rule 871 IAC 24.16(4) that says that the amount of vacation pays should be converted to eight hours as the normal workday and five workdays for a normal workweek. While the Agency should have followed the employer's designation and applied the vacation through May 23 since Tomanek-Chalkley was working 24 hours per week, the employer never appealed the decision issued by the Agency, and therefore the determination to apply the vacation pay through the week ending April 19 became final.

Because the vacation pay for the weeks between March 23 and April 19, 2014, was more than her weekly benefits amount, the claimant was ineligible for benefits for those weeks. The remaining \$180.96 must be applied to the week ending April 26, reducing her benefits to \$173.

DECISION:

The unemployment insurance decision dated September 24, 2014, reference 02, is affirmed. Ann Tomanek-Chalkley was ineligible to receive unemployment insurance benefits for the weeks between March 23 and April 19, 2014, due to the receipt of vacation pay. She was entitled to \$173 in benefits for the week ending April 26, 2014.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs