

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY G ROETHLER
Claimant

APPEAL NO. 23A-UI-09651-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHERN IA ECONOMIC DEVELOPMENT
Employer

**OC: 05/28/23
Claimant: Appellant (3)**

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

On October 5, 2023, Stacey Roethler (claimant) filed a timely appeal from the September 27, 2023 (reference 01) decision that allowed reduced benefits for the week that ended June 10, 2023, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant received vacation pay, paid time off (PTO), holiday pay, severance pay and/or dismissal pay that was deductible from unemployment insurance benefits. After due notice was issued, a hearing was held on October 26, 2023. Claimant participated. Jessica Fenton represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, the SIDES notice of claim and employer response, the Unemployment Insurance Notice of Reportable Income, and the Statement of Fact/Decision Worksheet.

ISSUES:

Whether the claimant received vacation pay that is deductible from the claimant's unemployment insurance benefits.

Whether Iowa Workforce Development correctly deducted vacation pay from the claimant's unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Stacey Roethler (claimant) established an original claim for benefits that was effective May 28, 2023. Iowa Workforce Development set the weekly benefit amount at \$524.00. The claimant made her first weekly claim on June 4, 2023 for the week that ended June 3, 2023. The claimant reported \$166.00 in earned regular wages, \$333.00 in vacation pay, and \$166.00 in holiday pay. The combined amounts reported by the claimant totaled \$665.00. Because the combined wages reported by the claimant equaled or exceeded the \$524.00 weekly benefit amount plus \$15.00, IWD did not pay benefits to the claimant for the week that ended June 3, 2023. The claimant made her second weekly claim on June 11, 2023 for the week that ended June 10, 2023. For that week, the claimant reported zero regular wages, zero vacation

pay, and zero holiday pay. Based on the claimant's wage report, IWD paid \$524.00 in benefits to the claimant.

At the time the claimant established her original claim for benefits, she was employed by Southern Iowa Economic Development as a full-time Family Service Worker as part of the employer's Head Start program. The claimant's usual work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. The claimant's wage during the relevant period was \$20.87 an hour. The claimant's wages for an eight-hour day totaled \$166.96. The claimant last performed work for Southern Iowa Economic Development on Tuesday, May 30, 2023 and completed an eight-hour shift that day. The claimant earned and the employer paid \$166.96 in regular wages for that day. The employer also paid the claimant \$166.96 in holiday pay for Monday, May 29, 2023, Memorial Day. On Wednesday, May 31, 2023, the claimant used a day's worth of paid time off (PTO), valued at \$166.96. Effective Thursday, June 1, 2023, the employer laid off the claimant for the summer academic break.

In connection with the June 1, 2023 layoff, the employer paid the claimant \$3,537.67 for 169.51 hours of accrued but unused vacation pay benefits. The employer paid the amount as a lump sum payment on June 16, 2023. The vacation payout was separate from the eight hours of PTO the employer paid for Wednesday, May 31, 2023.

On June 1, 2023, IWD issued a notice of claim to the employer via SIDES and provided a June 12, 2023 deadline for the employer's response. On June 5, 2023, the employer filed a response via SIDES. The employer reported that the claimant had been temporarily laid off and erroneously provided May 31, 2023 as the last day the claimant reported to work. The employer provided the \$20.87 wage and indicated the claimant usually worked a 40-hour week. The employer indicated the employer had paid \$3,537.67 in lump sum vacation pay representing the equivalent of 169.51 hours of wages. The employer erroneously stated the payment had been made on June 1, 2023. The employer had made the lump sum payment on June 16, 2023 with the intention that the payment would apply to the period beginning June 1, 2023. However, the employer left blank the spaces on the SIDES form where the employer was supposed to designate the period to which the employer wanted IWD to apportion the vacation pay when determining the claimant's eligibility for unemployment insurance benefits.

Upon receipt of the employer's SIDES response to the notice of claim and the vacation pay information contained therein, IWD redetermined the claimant's eligibility for benefits. IWD apportioned the vacation pay reported by the employer as follows. IWD apportioned the equivalent of two days' wages (\$333.92) to June 1 and to June 2 2023, which were the Thursday and Friday of the week that ended June 3, 2023. The combination of earned wages, PTO and apportioned pay totaled \$667.84. Inclusion of the holiday pay brought the weekly total to \$834.80. IWD apportioned the equivalent of three days' wages (\$500.88) to June 5, 6 and 7, 2023, the Monday, Tuesday and Wednesday of the week that ended June 10, 2023. In all, IWD only apportioned vacation pay in the equivalent of five days wages to the unemployment insurance claim period and applied the vacation pay to the five working days that followed the May 31, 2023 last of employment provided by the employer.

Because the claimant had not received unemployment insurance benefits for the week that ended June 3, 2023, IWD did not address that week in a redetermination decision, though it should have. Based on apportionment of three days of vacation pay to the week ended June 10, 2023, IWD issued a decision stating the claimant was only eligible for a reduced benefit amount during that week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(7) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 96.1A, 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. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.1A, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" or paragraph "b", 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, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount 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 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 96.1A, subsection 41, for any period in excess of five workdays 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.

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 claimant received vacation pay that was deductible from unemployment insurance benefits. The employer provided a timely response to the notice of claim, included vacation pay information, but did not designate the period to which the vacation pay should be applied. Pursuant to the vacation pay statute, IWD correctly apportioned two days of vacation pay to the week that ended June 3, 2023 and three days of vacation pay to the week that ended June 10, 2023. Even without taking into consideration the holiday pay, the claimant's combination of earned wages, PTO, and apportioned vacation pay during the week that ended June 3, 2023 exceeded her weekly benefit amount and rendered the claimant ineligible for unemployment insurance benefits for that week. Because the claimant had received not unemployment insurance benefits for that week, there would be no need for an overpayment decision pertaining to that week. Apportionment of the three days of vacation pay (\$500.88) to the week that ended June 10, 2023, reduced the claimant's benefit eligibility amount by \$501.00 (\$500.88 rounded to the nearest whole dollar amount). Thus, the claimant was only eligible for \$23.00 for the week that ended June 10, 2023. Because the claimant was paid \$524.00 in unemployment insurance benefits for the week that ended June 10, 2023, apportionment of the vacation pay should have triggered an overpayment decision that included a \$501.00 overpayment amount for the week that ended June 10, 2023.

DECISION:

The September 27, 2023 (reference 01) decision is MODIFIED adverse to the claimant as follows. The claimant received vacation pay that was deductible from unemployment insurance benefits during the benefit weeks that ended June 3 and June 10, 2023. IWD correctly apportioned vacation pay in the equivalent of two days' wages to the week that ended June 3, 2023. Based on the claimant's combined wages for the week that ended June 3, 2023, the claimant was not eligible for benefits for the week that ended June 3, 2023. IWD correctly apportioned vacation pay in the equivalent of three days' wages (\$501.00, rounded) to the week that ended June 10, 2023, which reduced the claimant unemployment insurance benefit amount for that week from \$524.00 to \$23.00. The claimant was eligible for reduced benefits in the amount of \$23.00 for the week that ended June 10, 2023, provided she was otherwise eligible.



James E. Timberland
Administrative Law Judge

October 27, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.