

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L BROADRICK
Claimant

APPEAL NO: 11A-UI-07523-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER – CLINTON INC
Employer

**OC: 04/17/11
Claimant: Appellant (2)**

Iowa Code § 96.5(7) – Vacation Pay

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 3, 2011 determination (reference 03) that held she was not eligible to receive benefits until the week ending July 9, 2011, because vacation pay she received from the employer was attributable to the weeks ending April 23 through July 9, 2011. The claimant participated in the hearing. Diane Grant, the director of human resources, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant eligible to receive benefits as of April 17, 2011.

ISSUE:

Did the claimant receive vacation pay that should be attributed to the weeks ending April 23 through July 9, 2011?

FINDINGS OF FACT:

The claimant worked 16 hours a week for the employer and earned \$21.31 an hour. The claimant's last day of work in early November 2010.

During her employment, the claimant earned six hours of personal time off every week. The personal time off could be used for vacations, holidays, sick days or any time off the claimant requested. The employer did not designate a percentage as sick leave or vacation so employees could use this time for different reasons.

When the claimant's employment ended, she had accumulated 589 hours of personal time off or PTO. Even though the claimant requested the payout of her accumulated PTO over a period of weeks, the employer paid her the total amount in November 2010.

The claimant established a claim for benefits during the week of April 17, 2011. The employer responded to a notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer stated the claimant received vacation pay of \$12,551.59 and designated November 6, 2010, through July 8, 2011, as the period to which the

vacation pay was to apply. This was based on the claimant working 16 hours a week for the employer.

REASONING AND CONCLUSIONS OF LAW:

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. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5(7). If paid time off is "vacation pay," the representative's determination is correct and the claimant is ineligible for benefits for the weeks ending April 23 through July 9, 2011

The real question is whether PTO should be treated as vacation pay under Iowa Code § 96.5(7). The problem is the statute and rule (871 IAC 24.16) requires vacation pay to be deducted, but 871 IAC 24.13(4) states that payments for unused sick leave are not. Employers who set up a PTO program set up a program that merges these two kinds of time off which the law says should be treated differently for unemployment purposes.

The legislature did not make "vacation pay" deductible and neither the statutes nor the rules—which identify nearly a dozen different types of payment by name—say a word about PTO. Applying the canon of statutory interpretation that "the expression of one thing is the exclusion of others," and when ambiguous the unemployment insurance law is to be construed liberally to achieve the legislative goals of minimizing the burden of unemployment. I conclude that if the legislature or agency want PTO deducted, they should say so expressly. See *Smith v. Iowa Employment Security Commission*, 212 NW 2d 471, 473 (Iowa 1973), *Brumley v. Iowa Dept. of Job Service*, 292 NW 2d 126, 129 (Iowa 1980).

Finally, I have reviewed 871 IAC 24.13(3)b, which lists "excused personal leave" as item "fully deductible payments from benefits" but find it unhelpful in deciding this case. First, a payment for unused PTO at the time of separation is not "personal leave with pay granted to an employee for an absence due to personal reasons" as the rule defines excused personal leave. Second, I have never heard of PTO being referred to as "casual pay" or "random pay." The rule states "excused personal leave" is "fully deductible" (meaning dollar for dollar, rather than using the wage deduction formula of 871 IAC 24.18) only if it is taken during a scheduled vacation. It does not say one way or the other whether excused personal leave is deductible if paid outside of a scheduled vacation.

Since PTO is not deductible, no deduction for this payment shall be made for the weeks ending April 23 through July 9, 2011. This means the claimant is eligible to receive benefits as of April 17, 2011.

DECISION:

The representative's June 3, 2011 determination (reference 03) is reversed. The claimant did not receive vacation pay; she received a payment for her PTO, which is not deducted from unemployment insurance benefits. Therefore, the amount of the PTO payment that was attributed to the weeks ending April 23 through July 9, 2011, was done in error. The claimant is eligible to receive benefits for the weeks ending April 23 through July 9, 2011, if she meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs