

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE A OLESON
Claimant

APPEAL NO: 08A-UI-08890-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALDORF LUTHERAN COLLEGE ASSN
Employer

OC: 05/11/08 R: 02
Claimant: Appellant (4)

Section 96.5-5 – Severance Pay
Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Marie A. Oleson (claimant) appealed a representative's September 30, 2008 decision (reference 01) that concluded the claimant was ineligible for benefits for the four-week period ending June 28, 2008 due to receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2008. This appeal was consolidated for hearing with two related appeals, 08A-UI-08891-DT and 08A-UI-08892-DT. The claimant participated in the hearing. Karie Knutson appeared on the employer's behalf. During the hearing, Exhibits A-1 and Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive severance pay and was it properly allocated and deducted? Was the claimant's vacation pay properly allocated and deducted?

FINDINGS OF FACT:

The claimant started working for the employer on April 29, 1985. As of about July 9, 2007 she worked full time as director of marketing at a salary of \$39,659.00; her annualized hourly rate of pay was \$19.07. She normally worked a 40-hour week, Monday through Friday. Her last day of work was April 29, 2008.

Upon her separation on April 29 the claimant was given a check as severance pay equivalent to her pay for one month in a gross amount of \$3,304.92. This represented the pay she would have received for working the month of May. In addition, she was given a check for her vacation pay; this was in a gross amount of \$3,203.94. This represented her accrued 154.33 hours of vacation accrued through April 29, plus 13.33 hours of vacation she would have accrued in May.

The claimant established an unemployment insurance benefit year effective May 11, 2008. She filed weekly claims thereafter, but did not receive any unemployment insurance benefits until the week ending June 7, 2008. A notice of the filing of her claim was mailed to the employer on May 16. The deadline provided on the notice for a response was May 27, 2008. On May 30 the employer responded by submitting the form indicating that the claimant had been paid \$3,203.94 in vacation pay and that the period to which the pay should be allocated was June 1 through June 29.

REASONING AND CONCLUSIONS OF LAW:

If severance pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility. Iowa Code § 96.5-5(a); 871 IAC 24.13(3)c. If vacation pay was or will be received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility; the vacation pay paid or owed "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." Iowa Code § 96.5-7; 871 IAC 24.16.

The severance pay was designated by the employer in its communications with the claimant as in lieu of the claimant's regular pay through the end of May; while the employer did not report and allocate the severance pay on its May 30 filing, the receipt and allocation of that payment to the month of May was properly determined on the basis of the information otherwise available. 871 IAC 13(1). If it had been timely allocated, the vacation pay then would normally begin its allocation as of the next day after the application of the severance pay. However, 871 IAC 24.16(3) provides that if an employer fails to make a timely response to the notice of claim to designate the period of time to which a vacation payment is to apply, "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 . . ."

The claimant's "last day worked" was April 29. Since the employer did not make a timely designation of the period to which it wished her vacation pay payment to be applied, it becomes allocated to the period beginning April 30 and ending May 7. This is also consistent with the general provision that unless otherwise timely designated by the employer, vacation pay is to be deducted from eligibility before other deductible payments, including severance pay. 871 IAC 24.13(1). There is no provision in the statute or rules that precludes the overlapping of post-separation payments with vacation pay in the absence of a timely designation by the employer of the optional allocation of the vacation pay to a period other than the week immediately following the separation.

Therefore, May 31 was the last date to which any payment should have been allocated. As a result, the claimant is only ineligible to receive unemployment insurance benefits through the week ending May 31, 2008. As of June 1, 2008, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's September 30, 2008 decision (reference 01) is modified in favor of the claimant. The vacation pay was not correctly deducted. Because it was not properly designated, the vacation pay applied from April 30 through May 7, 2008. Severance pay applied through the period ending May 31, 2008. As of June 1, 2008, benefits are allowed, provided the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs