

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENDA L MCAVOY
Claimant

APPEAL NO: 14A-UI- 09961-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE ECONOMY ADVERTISING COMPANY
Employer

**OC: 02/09/14
Claimant: Appellant (1)**

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 22, 2014, reference 01, that concluded she was ineligible to receive unemployment insurance benefits for the week ending February 15, 2014, due to the receipt of vacation pay. A telephone hearing was held on October 15, 2014. The claimant participated in the hearing with a witness, Angie Davidson. Cory Cremers participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible vacation pay and was it properly deducted?

FINDINGS OF FACT:

The claimant worked for the employer from August 2007 to February 7, 2014. Her rate pay was \$14.20 per hour or \$568 per week.

After her separation from employment, the claimant received payment of \$766.80 for 54 hours of unused vacation pay and \$1704 for 120 hours of severance pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 9, 2014. Her weekly benefit amount was \$408. 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 reported payments of \$766.80 for 54 hours of unused vacation pay and \$1704 for 120 hours of severance pay.

The claimant reported all of the vacation pay and severance pay she received during the week ending February 15, 2014. As a result, she did not receive benefits for that week. The claimant received gross benefits of \$408 per week for the weeks ending February 22, March 1, March 8 and March 15.

REASONING AND CONCLUSIONS OF LAW:

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

Under the unemployment insurance law, a person is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay or vacation pay of over his weekly benefit amount attributable to the same week. Iowa Code §§ 96.5-5-a and 96.5-7. Employers are permitted to designate the period to which the severance pay or vacation pay is 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). The rules provide that if vacation pay is paid in conjunction with some other deductible payment, the vacation pay is deducted first unless the employer has designated otherwise. 871 IAC 26.13(1).

In this case, the claimant received vacation and severance pay and the employer timely reported the amounts and designated the period to which the amount applied.

Under the rule, the 54 hours of unused vacation pay would be applied first. For the week ending February 15, 40 hours would be applied. The remaining 14 hours of vacation pay (\$198.80) would be applied to the week ending February 22. At that point, the 120 hours of severance pay would start being applied. For the week ending February 22, 26 hours of severance pay (\$369.20) would be applied. Since the vacation and severance pay exceeded her weekly benefit amount, she would be ineligible of benefits for that week.

For the weeks ending March 1 and 8, 40 hours per week of severance pay (\$568) would be applied. Since the severance pay exceeded her weekly benefit amount, she would be ineligible of benefits for those two weeks.

The remaining 14 hours of severance pay (\$198.80) would be applied to the week ending March 15. The claimant was eligible for \$209 in benefits (\$408 - \$198.80) for that week.

The claimant was ineligible to receive unemployment insurance benefits for the week ending February 15 due to the receipt of vacation pay and for the week ending February 22 as a result of the receipt of vacation and severance pay.

DECISION:

The unemployment insurance decision dated September 22, 2014, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the weeks ending February 15 and 22, due to the receipt of vacation and severance pay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css