

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY J FELTEN**  
Claimant

**APPEAL NO. 10A-UI-06916-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROWN'S MEDICAL IMAGING**  
Employer

**OC: 05/10/09**  
**Claimant: Appellant (3)**

Iowa Code Section 96.5(7) – Vacation Pay  
Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Anthony Felten filed a timely appeal from the May 4, 2010, reference 01, decision that denied benefits for the three-week period that ended June 6, 2009 based on an Agency conclusion that he had received vacation pay deductible from those weeks that exceeded his weekly unemployment insurance benefit amount. After due notice was issued, a hearing was held on June 28, 2010. Mr. Felten participated. Mark Petersen represented the employer and presented additional testimony through Connie Krugman. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and wages reported by the claimant. Department Exhibits D-1 and D-2 were received into evidence. The parties waived formal notice of the issue of whether Mr. Felten received severance pay deductible from his unemployment insurance benefits. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-06917-JTT.

**ISSUES:**

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

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any severance pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any severance pay should be applied.

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Anthony Fenton was employed by Brown's Medical Imaging as a full-time salesperson until May 13, 2009. Mr. Fenton last performed work for the employer on Wednesday, May 13, 2009. At the time, Mr. Fenton separated from the employment he had accrued but not yet used 14.5 days or 116 hours of vacation pay benefit. The gross total value of the unused vacation benefit was \$2,010.47. The employer paid Mr. Felten the value of the vacation pay benefit on or before June 11, 2009. At the time of the separation, the employer notified Mr. Felten that the employer would pay him his regular salary through the end of the month. The gross total for the additional wages in lieu of notice was \$1,663.84. The employer paid Mr. Felten these additional wages on or before June 11, 2009. Mr. Felten did not have to waive any rights or sign any agreement with the employer to obtain these additional wages for the month of May 2009.

Mr. Felten established a claim for unemployment insurance benefits that was effective May 10, 2009. Mr. Felten reported no wages and received no benefits during the benefit weeks that ended May 16, 23, and 30, 2009. Mr. Felten received \$361.00 in weekly benefits for the period of May 31, 2009 through November 28, 2009, when he exhausted his maximum benefit amount. Mr. Felten also received an additional \$25.00 in weekly federal stimulus benefits. Mr. Felten's eligibility for the federal stimulus benefits during any benefit week was contingent upon him being eligible for regular unemployment insurance benefits during that same week.

On May 15, 2009, Iowa Workforce Development mailed a Notice of Claim to the employer. The Notice of Claim indicated on its face a May 26, 2009 deadline for the employer's response to the Notice of Claim. On May 18, 2009, Mark Petersen, Vice President, completed the employer's information on the Notice of Claim and faxed the employer's response to Workforce Development. The Unemployment Insurance Service Center received the employer's response by fax on May 18, 2009. The employer did not protest the claim for benefits. In the space provided, the employer designated May 14-29, 2009 as the period to which it wanted the \$1,663.84 in severance pay applied when determining Mr. Felton's eligibility for unemployment insurance benefits. In the space provided, the employer designated May 30 through June 19, 2009 as the period to which it wanted the \$2,010.47 vacation benefit pay applied when determining Mr. Felten's eligibility for unemployment insurance benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
  - a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
  - b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
  - c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social

Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

871 IAC 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

871 IAC 24.13(3)c provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

An individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits which would otherwise be due, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a layoff. The Appeals Section has historically excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. The evidence in the record establishes that the additional \$1,663.84 in wages the employer paid to Mr. Felten through the

end of May 2009 were indeed wages in lieu of notice, or severance pay, and were deductible from his unemployment insurance benefits. The employer made a timely designation of the period to which the severance pay should be applied. Because the employer made a timely designation, the employer's designation of the period to which the severance pay should be applied controls when determining Mr. Felten's eligibility for unemployment insurance benefits. There were 12 regular, Monday-Friday, working days in the May 14-29, 2009 period the employer designated as the period to which the severance pay should be applied. Thus, the law requires that an equal portion of the \$1,663.84, or \$138.65 rounded to \$139.00, be apportioned to each working day during the period designated by the employer. The correct amount to be apportioned to the week ending May 16, 2009 was \$278.00. Mr. Felten also had wages for the first three days of the week that ended May 16, 2009. Because the wages and the additional severance pay apportioned to that week exceeded Mr. Felten's \$361.00 weekly unemployment insurance benefit amount, Mr. Felten was not eligible for benefits for that week. The correct amount to be apportioned to the weeks ending May 23 and 30, 2009, was \$695.00. Because this amount exceeded Mr. Felten's weekly unemployment insurance benefit amount, Mr. Felten was not eligible for benefits for the weeks ending May 23 and 30, 2009. Because Mr. Felten received no benefits for these three weeks, there was no overpayment of unemployment insurance benefits for those weeks.

With the severance pay issue out of the way, the administrative law judge can now address the vacation pay issue.

Iowa Code section 96.5-7 provides:

An individual shall be disqualified for benefits: ...

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 96.19, 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, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, 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. Any individual

receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages 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 and if the employer does not designate the vacation period pursuant to paragraph "b", 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 96.19, subsection 41, for any period in excess of one week 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. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

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.

Because the employer made a timely designation of the period to which the employer wanted the vacation pay benefit to be applied, the law says that the employer's designation controls. There were 15 regular, Monday-Friday, working days during the May 30-June 19, 2009 period designated by the employer as the period to which the vacation pay should be applied when determining Mr. Felten's eligible for unemployment insurance benefits. There were five such working days in week that ended June 6, 13 and 20, 2009. The law required that an equal portion of the \$2,010.47 vacation pay benefit, or \$134.03 rounded to \$134.00 be apportioned to each of those 15 regular working days. Thus, the law required that \$670.00 be apportioned to the weeks ending June 6, 13, and 20. Because the apportioned severance pay exceeded Mr. Felten's \$361.00 weekly unemployment insurance benefit amount, Mr. Felten was not eligible for any benefits during the weeks that ended June 6, 13, and 20. Not only was Mr. Felten not eligible for regular benefits during these three weeks, but he was also not eligible for the additional \$25.00 in federal stimulus benefits he received for each of these three weeks.

#### **DECISION:**

The Agency representative's May 4, 2010, reference 01 decision is modified as follows. The claimant received severance pay deductible from his unemployment insurance benefits for the weeks that ended May 16, 23 and 30, 2009. The claimant's combined wages and severance pay exceeded his weekly unemployment insurance benefit amount for the week ending May 16, 2009 and the claimant was not eligible for benefits for that week. The claimant's apportioned severance pay exceeded the claimant's weekly unemployment insurance benefit amount for the weeks ending May 23 and 30, 2009, and the claimant was not eligible for benefits for those weeks. The claimant received vacation pay that was deductible from his unemployment insurance for the weeks ending June 6, 13, and 20, 2009. The vacation pay apportioned to each of those weeks exceeded the claimant's weekly unemployment insurance benefit amount.

The claimant was not eligible for benefits for the weeks ending June 6, 13 and 20, 2009. The claimant was also not eligible for the additional \$25.00 in federal stimulus benefits he received for each of those three weeks.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css