

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI A HEEREN

Claimant

APPEAL NO: 14A-UI-10197-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOWDING INDUSTRIES OF IOWA LLC

Employer

OC: 06/22/14

Claimant: Appellant (4)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Vicki A. Heeren (claimant) appealed a representative's September 25, 2014 decision (reference 02) that concluded she was ineligible for benefits for the two weeks ending July 5, 2014 due to receipt of vacation pay from Dowding Industries of Iowa, L.L. C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-10198-DT. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the claimant, 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 vacation pay and was it properly allocated and deducted?

FINDINGS OF FACT:

The claimant worked full time on a Monday through Friday schedule as an administrative assistant at an hourly rate of \$13.50. Her last day of work was Friday, June 20, 2014. At the time she separated from the employment she had accrued, but not yet used, 105 hours of vacation pay benefits with a gross dollar value of \$1,417.50. This was subsequently paid out to her.

The claimant established an unemployment insurance benefit year effective June 22, 2014. Her weekly benefit amount was established as \$408.00. She made weekly continued claims for weeks including the weeks ending June 28 and July 5; she reported the receipt of vacation pay of \$540.00 for the week ending June 28 and received no benefits that week. She reported no wages or vacation for weeks thereafter, and received her full weekly benefit for those weeks.

She was given a "severance agreement"; the agreement indicated that *provided that* the claimant signed the agreement, she would be paid \$3,000.00. The agreement stated that "in exchange ... you release and waive all claims, causes of action or the like ... known or unknown, to the extent permitted by law, that you ... have, had or may have in the future against the [employer]." She did sign the agreement and therefore did receive the payment.

A notice of claim was mailed to the employer on June 27, 2014, and the employer responded by faxing a response to the Agency on July 2, 2014. On the response the employer provided vacation pay information. The employer indicated on the form that at the time the claimant separated from the employment she had accrued, but not yet used, 105 hours of vacation pay benefits with a gross dollar value of \$1,417.50. The notice of claim form contained instructions as follows: "Failure to provide the time period to which the vacation pay applies shall result in the entire amount be applied to the 5 working days following the last day worked." The notice of claim form provided a space for employer remarks. The employer did not put any information into this space, and did not otherwise note on the form the period to which the reported vacation pay amount should be applied.

When the Agency received the employer's information regarding vacation pay, an Agency representative used that information to redetermine the claimant's benefit eligibility. The Agency representative applied 40 hours of pay (equaling \$540.00) for each of the weeks ending June 28, and July 5, and applied the remaining 25 hours (equaling \$338.00 (rounded)) to the week ending July 12. Based on this apportionment of the vacation pay, the Agency representative concluded that the claimant was not eligible for unemployment insurance benefits for the weeks that ended June 28 and July 5, and that she was only eligible for partial benefits for the week ending July 12, 2014. Because the claimant had previously received unemployment insurance benefits for the weeks that ended July 5 and July 12, the Agency representative also concluded that the claimant had been overpaid benefits for those weeks and entered a decision on September 25 (reference 03), the subject of the concurrently issued decision in 14A-UI-10198-DT, that the claimant had been overpaid for those weeks.

The employer provided a statement for the hearing, Exhibit A-2, which specified that "any vacation payouts made from Dowding were not to be considered disqualification factors for unemployment benefits."

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.5-7-a,b,c and d provide:

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.

[Emphasis added.]

Rule 871 IAC 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.

[Emphasis added.]

The evidence in the record establishes that the employer made a timely response to the notice of claim, but did not designate the period to which the vacation pay should be apportioned when determining the claimant's eligibility for unemployment insurance benefits. Accordingly, pursuant to the statute, the Agency representative should have apportioned all of the vacation pay amount to the one week period, the first 40 hours, after the claimant's separation on June 20, 2014.¹

The entire \$1,417.50 is therefore attributed to the week ending June 28, 2014. That week the claimant received vacation pay which exceeded her weekly benefit amount and, therefore, she was ineligible for unemployment insurance benefits for that week. Because the employer did not designate the period to which the vacation pay should be applied (nor does it appear that it even intended to have the vacation pay applied to any other week), the vacation pay is not deductible from unemployment insurance benefits for any other week.

DECISION:

The representative's September 25, 2014 decision (reference 02) is modified in favor of the claimant. The vacation pay was not correctly allocated or deducted. Vacation pay applied only to the week ending June 28, 2014. The vacation pay was not deductible from any other week of the claimant's claim and the claimant would be eligible for benefits during the other weeks of her claim provided she meets all other eligibility requirements.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs

¹ If the "severance" payment would have been a true "severance" payment, that payment would have been deductible first, but the employer's requirement that claimant waive all claims and release it from liability means that the payment was not just for severance, but was in consideration for a liability waiver, which is not a disqualifying payment. Therefore, the claimant did not receive any disqualifying severance pay from the employer due to the waiver of all claims in the agreement. Iowa Code § 96.5-5-a.