

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TODD J SORENSEN
Claimant

APPEAL NO. 19A-UI-08466-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH CENTRAL COOPERATIVE
Employer

OC: 09/22/19
Claimant: Appellant (2)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Todd Sorensen filed a timely appeal from the October 21, 2019, reference 03, decision that denied benefits for the two-week period of September 22, 2019 through October 5, 2019, based on the deputy's conclusion that Mr. Sorensen received or was entitled to receive vacation pay, paid time off, holiday pay, severance pay and/or separation pay that was considered wages that was deductible from his unemployment insurance benefit eligibility. After due notice was issued, a hearing was held on November 20, 2019. Mr. Sorensen participated. Mark Luker represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-08465-JTT. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the claimant received or was entitled to receive vacation pay, paid time off, holiday pay, severance pay and/or separation pay that was considered wages and that was deductible from his unemployment insurance benefit eligibility for the two weeks between September 22, 2019 and October 5, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Todd Sorensen was employed by North Central Cooperative as a full-time mechanic from 2016 until September 11, 2019, when the employer discharged him from the employment. Mr. Sorensen last performed work for the employer on Tuesday, September 10, 2019. At the time Mr. Sorensen separated from the employment, he had accrued but not yet used 139.69 hours of vacation pay/paid time off (PTO). The gross dollar value of the unused benefit was \$3,160.16. In connection with Mr. Sorensen's separation from the employment, the employer withheld appropriate payroll taxes, applied \$2,856.00 of the net PTO pay to Mr. Sorensen's outstanding employee charge account balance, and disbursed the remaining \$110.00 to Mr. Sorensen. By dividing the payment by the hourly value of the benefit, one gets Mr. Sorensen's final hourly wage, \$22.62.

Mr. Sorensen waited until September 22, 2019 to established an original claim for unemployment insurance benefits. Iowa Workforce Development set Mr. Sorensen's weekly benefit amount at \$500.00. Mr. Sorensen made a weekly claim for the week that ended September 28, 2019, but received no benefits in connection with the claim. Mr. Sorensen did not file a claim for benefits for the weeks that ended October 5 and October 12, 2019. Mr. Sorensen reopened his claim effective October 13, 2019. Mr. Sorensen then made weekly claims for the three weeks between October 13, 2019 and November 2, 2019, but received no benefits for those weeks.

On September 24, 2019, Iowa Workforce Development mailed a notice of claim to the employer. The notice of claim included an October 4, 2019 deadline for the employer's response to the notice of claim. On September 29, 2019, the employer faxed its protest on the notice of claim form. The Unemployment Insurance Service Center received the protest on September 29, 2019. On the notice of claim form, the employer's controller erroneously left blank numbered paragraph 11 pertaining to vacation pay. Instead, the controller wrote in numbered paragraph 12 pertaining to severance pay/dismissal pay/separation pay. The controller indicated that Mr. Sorensen had received \$3,160.16 for 139.69 hours. The controller did not designate the period to which such pay should be apportioned when determining Mr. Sorensen's eligibility for unemployment insurance benefits. The Iowa Workforce Development deputy considered the information provided by the employer and concluded that Mr. Sorensen was ineligible for benefits for the two-weeks between September 22, 2019 and October 5, 2019. The deputy was unaware that the pay was vacation pay, rather than severance pay.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(7) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 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" or paragraph "b", 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, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount 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 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 five workdays 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.

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.

Iowa Admin. Code r. 871-24.16(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.

Paid Time Off (PTO) is treated as vacation pay and is fully deductible from unemployment insurance benefits. See Iowa Administrative Code rule 871-24.13(3)(b) and 871-24.16. Unless otherwise specified by the employer in the response to the notice of claim, the amount of the vacation pay shall be converted by Workforce Development to eight hours for a normal workday and five workdays for a normal workweek.

in light of the fact that the payment disbursed in connection with the separation was vacation/PTO, and in light of the employer's failure to designate the period to which the vacation pay/PTO should be applied, the payment should have been apportioned as follows. Tuesday, September 10, 2019 was Mr. Sorensen's final day in the employment. His final wage was \$22.62. \$180.96 (rounded to \$181.00) of the vacation pay should have been apportioned to each Monday-Friday "work day" that immediately followed the last day worked for a maximum of five work days. \$543.00 would be apportioned to Wednesday-Friday, September 11-13, 2019 and \$362.00 should have been apportioned to Monday-Tuesday, September 16-17, 2019. Under the applicable law, all of the properly apportioned vacation pay/PTO was apportioned to a period that predated Mr. Sorensen's claim for unemployment insurance benefits and therefore would not be deductible from the September 22, 2019 unemployment insurance claim.

DECISION:

The October 21, 2019, reference 03, decision is reversed. The claimant received vacation pay/paid time off, all of which had to be apportioned to a period that predated the filing of the unemployment insurance claim. The vacation pay/PTO that the claimant received in connection with the separation from the employment was not deductible from the unemployment insurance claim that was effective September 22, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn