

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

**THOMAS A MILLER**  
Claimant

**APPEAL NO. 09A-UI-05791-VS**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWKEYE TRI-COUNTY ELECTRIC CO-OP**  
Employer

**OC: 03/01/09**  
**Claimant: Respondent (1)**

871 IAC 24.13(3)(b) – Paid Time Off

Iowa Code section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 2 , 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for November 4, 2009, in Decorah, Iowa. Prior to the hearing, attorneys for both parties contacted the administrative law judge to state that the parties had agreed to a set of stipulated facts and that the only issue was a legal issue concerning the overpayment of benefits. The record consists of employer's exhibits A-E.

**ISSUE:**

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge makes the following findings of fact:

The claimant was the chief executive officer and general manager for the employer, a rural electrical coop. The claimant was terminated effective January 21, 2009. The claimant received \$57,926.29 for unused accrued Paid Time Off ("PTO") as provided under section 3.3 of the claimant's written employment agreement. This amount was allocated over the period from January 22, 2009, through June 25, 2009, since the amount paid represented approximately 22 weeks of PTO. That amount was paid to the claimant in a lump sum payment on February 2, 2009. For the time period January 22, 2009, through June 25, 2009, the claimant's PTO payment equaled \$2,633.01 per week. The employer, in lieu of vacation pay, provides its employees with PTO, which can be utilized for vacation. The amount paid to the claimant as allocated from January 22, 2009, through June 25, 2009, would have exceeded the claimant's weekly unemployment insurance benefit. Agency records show that the claimant received weekly benefits in the amount of \$409.00 per week for the week beginning March 7, 2009, and ending the week beginning April 25, 2009.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code rule 871 IAC 24.13(3)(b) provides as follows:

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:

- b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be fully deductible only when taken in conjunction with a scheduled period of vacation in which case it shall be treated as vacation and be fully deductible in the manner prescribed in rule 24.16(96).

Paid time off (PTO) is the equivalent of excused personal leave---paid time off that an employee accrues and that can be used for sick leave, vacation leave or other personal time off pursuant to the employer's PTO policy. Paid time off is not equivalent to vacation pay, which is a separate and distinct benefit the Iowa Legislature made deductible from unemployment insurance benefits by enacting Iowa Code section 96.5(7). Under the administrative rule, paid time off can only be deducted from unemployment insurance benefits when it is used during the course of the employment for a scheduled vacation. A payout of PTO in connection with a separation from the employment is not deductible from unemployment insurance benefits. The employer erroneously reported the PTO as vacation pay in the employer's response to the notice of claim. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant did not receive vacation pay that was deductible from his unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated April 2, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs