

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUHEE A MCCRACKEN
Claimant

APPEAL NO. 15A-UI-00192-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUSINESSSOLVER.COM INC
Employer

OC: 11/16/14
Claimant: Appellant (4)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Ruhee McCracken filed a timely appeal from the December 31, 2014, reference 02, decision that denied benefits for the week that ended December 13, 2014, based on an agency conclusion that she had received or was entitled to receive vacation pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on February 2, 2015. Ms. McCracken participated. Mimi Kelly, Human Resources Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 15A-UI-00191-JTT and 15A-UI-00193-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. Exhibits A and B and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the claimant received vacation pay that was deductible from her unemployment insurance benefits.

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

Whether Workforce Development correctly deducted vacation pay from unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ruhee McCracken was employed by Businesssolver.com, Inc., until the employer severed the employment relationship on Friday, November 21, 2014. At the time the claimant separated from the employment, the employer agreed to provide her with \$1,979.17 in wages in lieu of notice. The claimant received the wages in lieu of notice. The claimant did not have to waive any rights as a condition of receiving the wages in lieu of notice.

At the time the claimant separated from the employment, the employer agreed to pay any outstanding vacation pay benefits. The claimant asserts that her outstanding vacation pay

benefit at the end of the employment was the equivalent of 1.5 days of work. The claimant's annual salary was \$47,500.00. The employer paid that salary in twice-monthly installments. That amount divided by 52 weeks is \$913.46 per week. The weekly amount divided by five days is \$192.69. Thus, 1.5 days of vacation pay would amount to \$274.00.

In connection with the separation from the employment, the employer also paid the claimant \$397.00 in holiday pay for Thanksgiving and the following days, November 27-28, 2014.

Ms. McCracken established a claim for unemployment insurance benefits that was effective the week that started November 16, 2014. Iowa Workforce Development calculated the claimant's weekly benefit amount at \$359.00. For the benefit week that ended November 22, the claimant reported \$767.00 in wages and received no unemployment insurance benefits. These were the wages paid to the claimant for work she had performed for the employer during the last week of the employment. For the benefit week that ended November 29, 2014, the claimant intended to report severance pay of \$999.00 or more. The amount reported was initially coded as vacation pay. The claimant did not receive any unemployment insurance benefits for the week that ended November 29, 2014. For the week that ended December 6, 2014, the claimant intended to report \$990.00 in severance pay, but the amount was initially coded as vacation pay. The claimant did not receive any unemployment insurance benefits for the week that ended December 6, 2014. The claimant reported zero wages for the week that ended December 13, 2014. Iowa Workforce Development approved \$359.00 in benefits, but offset the benefits against a purported overpayment. For the next two weeks, the claimant reported zero wages and received \$359.00 in weekly benefits. For the week that ended January 10, 2015, the claimant reported zero wages, was approved for \$359.00 in benefits, but Workforce Development offset the benefits against a purported overpayment.

The employer has elected to receive electronic notices of claims. On November 24, 2014, Iowa Workforce Development electronically transmitted a notice of claim to the employer concerning the claimant. The notice of claim provided a December 5, 2014, deadline for the employer's response. Workforce Development received the employer's electronic response on November 26, 2014. The employer indicated that it was not protesting the claim for benefits. The employer reported that it had paid or would pay \$1,979.17 to the claimant as wages in lieu of notice and that the employer wished that amount to be allocated to the period of November 21, 2014 through December 5, 2014. The employer reported that it has paid or would pay \$396.88 to the claimant in vacation pay. That amount actually represented the amount of holiday pay the employer had paid to the claimant for Thanksgiving and the following day. The amount reported by the employer did not include the \$274.00 in actual vacation pay the employer provided to the claimant. The employer did not designate the period to which the employer wished to have the vacation pay apportioned.

In response to the employer's timely report concerning severance pay and the period to which the employer wanted the severance pay apportioned, a Workforce Development claims deputy apportioned the severance pay amongst the three weeks that ended November 22, November 29 and December 6, 2014. Because the claimant's wages reported for the week ending November 22, 2014 already exceeded her weekly benefit amount by more than \$15.00 and reduced her unemployment insurance benefit eligibility for that week to zero, the claimant's deputy's erroneous apportionment of eight hours of severance pay to the week ending November 22, 2014 had no effect on the claimant's eligibility for benefits for that week. The claims deputy apportioned the remaining balance of the severance pay in equal amounts, \$899.60 to the weeks ending November 29 and December 6, 2014. Because the severance pay exceeded the claimant's \$359.00 week unemployment insurance benefit amount, the claimant was not eligible for unemployment insurance benefits for those weeks.

The claims deputy apportioned \$396.80 in purported vacation pay to the week that ended December 13, 2014 and concluded that the claimant was not eligible for benefits for that week because the apportioned purported vacation pay exceeded her weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

This particular decision need only address the vacation pay issue. The severance pay issue is addressed in a companion case.

Iowa Code § 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 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.

The claims deputy misinterpreted and misapplied the law when determining the period to which the purported vacation pay was to be applied. The employer did not designate the period to which the vacation pay was to be applied. Under those circumstances, the law dictated that the entire vacation pay amount was to be apportioned to the first five days of the claim following the final day in the employment. All five of those days fell during the week that ended November 29, 2014. The claimant did not receive any vacation pay that was deductible from benefits for the week that ended December 13, 2014.

DECISION:

The claims deputy's December 31, 2014, reference 02, decision is modified as follows. The claimant received vacation that was deductible from her unemployment insurance benefits for the week that ended November 29, 2014. The claimant has already been deemed ineligible for benefits for that week in light of severance pay she received for that week. The vacation pay was not deductible from benefits for the week that ended December 13, 2014. The claimant was eligible for benefits for the week ending December 13, 2014, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs