

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER K PFISTER
Claimant

APPEAL NO. 09A-UI-10219-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DICE CAREER SOLUTIONS INC
Employer

OC: 02/08/09
Claimant: Appellant (2)

871 IAC 24.35(2) – Appeal Delay
Section 96.5-7 – Vacation Pay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated June 3, 2009, reference 04, that disqualified her for the week ending March 28, 2009 due to receiving vacation pay. A hearing was held on August 4, 2009. The claimant participated. The employer did not participate. Claimant Exhibits A and B was received as evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal.

The issue is whether the claimant received five weeks of vacation pay.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant was laid-off by Dice Career Solutions on February 11, 2009, and she entered into a General Release Agreement with her employer. The Agreement provides that the claimant will receive about six weeks of severance pay totaling \$8,459.34 upon her separation from employment. The Agreement requires the claimant to release all claims against her employer as a condition of receiving severance pay. The claimant signed and submitted the agreement to her employer, and she received the severance pay.

The employer protested the claimant's claim by applying the gross severance pay to a period from February 12, 2009 to March 23, 2009, and the accrued vacation pay of \$534.00 to a period from March 26 to March 31, 2009.

The claimant questioned a department representative about the employer's protest of her claim as to the vacation and severance pay. The representative stated there was nothing the claimant could do to challenge the protest. The claimant did not immediately appeal the department June 3 or 4, 2009 decisions based on the department statement. On July 15, claimant learned from a former co-worker that he had successfully challenged the employer

protest of severance and vacation pay. On July 17, the claimant filed an appeal that was received by her local Workforce Center on that date.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant affected a timely appeal on July 17, 2009, as the delay was due to department miss-information. The claimant received department advice in response to her inquiry whether there was anything she could do about the employer protest of vacation/severance pay that stated there was nothing she could do. The advice discouraged the claimant to appeal to the June decisions until she learned from a co-worker on July 15 that he had successfully challenged the employer payments. The only department advice to be given is the right of appeal to a department decision.

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.

The administrative law judge concludes that the employer requirement the claimant sign a general release of all claims against it negates the payment of vacation pay (\$534.00), which is not deductible from unemployment benefits, as protested by the employer.

While the employer used the claimant's length of service to determine the amount of separation pay, it required to her sign a general release of all claims that shifts the consideration of the payment beyond service to the employer. The claimant was required to release the employer from any liability claim in order to receive the employer labeled, vacation/severance pay that makes it not qualifying as deductible from unemployment benefits.

DECISION:

The decision of the representative dated June 3, 2009, reference 04, is reversed. The claimant affected a timely appeal. The claimant did not receive vacation/separation pay that is considered as disqualifying from unemployment benefits due to the requirement she agree to release the employer from liability as to all claims. The claimant is not disqualified for the one-week period ending March 28, 2009, and she is entitled to benefits, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css