

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY A HOLMES
N/K/A
BRITTANY A GEREIN
Claimant

CEDAR VALLEY MEDICAL
Employer

APPEAL 16A-UI-08191-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/20/16
Claimant: Appellant (3)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 25, 2016, (reference 01) unemployment insurance decision that deducted vacation pay from her unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2016. Claimant, now known as Brittany A. Gerein, participated along with her husband Brad Gerein. Employer participated through Connie Hix, Human Resources Manager. Department's Exhibit D-1 was entered and received into the record. Employer's Exhibit One was entered and received into the record. Official notice was taken of agency records.

ISSUES:

Did the claimant file a timely appeal?

Was the vacation pay deducted for the correct period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment on March 24, 2016. Thereafter, she received both severance pay and vacation pay. When the employer filed their notice of protest, they specifically indicated that claimant was separated on March 24 and would be paid for 80 hours or two weeks of severance pay for the period from March 25 through April 7. They also indicated that the claimant would be paid for 57.8 hours of accrued unused vacation time for the period from April 8 through part of April 19. The claimant was paid both severance and vacation pay at her normal hourly rate of pay of \$22.50 per hour.

The claimant does not recall receiving the inquiry letter from the agency dated April 14 nor the eventual decision on April 25. She filed her appeal on July 27 after she received the overpayment letter from the agency.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant first learned of the issue when she received the overpayment decision. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the vacation pay deduction should include a portion of the week ending April 23, 2016.

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.

Because the employer did designate a time period to which the vacation pay is to apply, the amount deducted by the agency should include a deduction for the week ending April 23, 2016. The employer designated vacation pay to apply for the following dates: April 8, 11, 12, 13, 14, 15 and 18 and part of the 19th. The employer specifically designated the time period to include April 18 and April 19 which are part of the week ending April 23. The total deduction from the claimant's unemployment insurance benefits for the week ending April 23 should have been \$221.00. The deduction is calculated to include 8 hours ($\$22.50 \times 8 = \180.00) for April 18 and 1.8 hours ($\$22.50 \times 1.8 = \40.5) for April 19.

DECISION:

The April 25, 2016, (reference 01), decision is modified in favor of the respondent. The claimant filed a timely appeal. The vacation pay deduction should include the week ending April 23 as set out above.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs