

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AYESHAH JOHNSON**  
Claimant

**QWEST CORPORATION**  
Employer

**APPEAL 19A-UI-05598-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/26/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(5) – Severance Pay  
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

**STATEMENT OF THE CASE:**

The claimant/appellant, Ayeshah Johnson, filed an appeal from the July 1, 2019 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits for a 38-week period due to receipt of severance pay. The parties were properly notified about the hearing. A telephone hearing was held on August 29, 2019. The hearing was held as a consolidated hearing with Appeals: 19A-UI-05599-JC-T, 19A-UI-05600-JC-T, and 19A-UI-05601-JC-T. -The claimant participated personally. Melissa Bird, lead analyst for Century Link, appeared in response to a subpoena. The employer did not otherwise respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Claimant Exhibits A-C were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant receive vacation pay, and if so, was it correctly deducted?  
Did the claimant receive severance pay, and if so, was it correctly deducted?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment for this employer in 1980. She was employed full-time as a service delivery coordinator and was separated from employment on May 30, 2019, when she was laid off due to a reduction in workforce. During her final week of work, she was paid 8 hours of holiday pay and 24 hours of work performed. She was not paid for May 31, 2019.

At the time of her separation, the claimant was paid \$7,179.48 in accrued but unused vacation time (Claimant Exhibit B). The claimant's hourly rate of pay was \$28.49. The claimant's vacation pay applied to her first week of employment would be \$1,435.90 per day. The claimant's weekly benefit amount is \$467.00.

Claimant also received severance pay in the amount of \$43,900.00 equivalent to 1520 hours, or thirty-eight weeks, of work. (Claimant Exhibit B). There was no requirement that she sign an agreement waiving certain rights to receive the pay.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did receive PTO and severance pay, which were correctly deducted.

Iowa Admin. Code r. 871—24.18 provides:

#### **Wage-earnings limitation.**

An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount. This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

Iowa Code § 96.5 (5) and (7) provide:

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

#### **5. Other compensation.**

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contributions to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration, or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same

period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

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. (emphasis added).

Iowa Admin. Code r. 871—24.13 provides:

Deductible and nondeductible payments.

Procedures for deducting payments from benefits.

Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96). **The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.**(emphasis added).

The general policy underlying the deductibility of vacation pay/PTO from benefit eligibility is "that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor." *Lefebure Corp. v. Iowa Dep't of Job Serv.*, 341 N.W.2d 768, 771 (Iowa 1983); see also, 14 A.L.R.4th 1175 §2(a) (1982). Thus, "vacation pay" is deductible because it is considered a form of "wage," which the statute further defines as any "remuneration for personal services . . ." Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer.

The claimant in this case was paid \$7,179.48 in unused vacation pay. Iowa Code Section 96.5(7)d specifically states "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..." Based upon the records, the claimant's vacation pay was correctly deducted. She was not entitled to receive unemployment insurance benefits for the week ending June 1 or June 8, 2019 due to wages earned and vacation pay.

With regard to severance pay, Iowa Admin. Code r. 871-24.13(3)c provides:

(3) 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:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

The claimant received severance pay of \$43,900.00 equivalent to 1520 hours, of work. The claimant did not have to sign a release or waiver to receive the severance pay. Severance pay is fully deducted from benefits on a dollar-for-dollar basis. See Iowa Admin. Code r. 871-24.13(3)c. Using the claimant's average weekly wage, she is ineligible for benefits for thirty-eight weeks due to the deductibility of her vacation and severance pay. This means she is not eligible for benefits due to deductions beginning May 26, 2019 through February 15, 2020.

**DECISION:**

The July 1, 2019 (reference 02) decision is affirmed. The claimant is ineligible for benefits May 26, 2019 through February 15, 2020 due to vacation and severance pay.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/scn