

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKY R TRAVIS
Claimant

APPEAL NO. 10A-UI-09253-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALNUT COMMUNITY SCHOOL DISTRICT
Employer

OC: 04/25/10
Claimant: Appellant (2)

Iowa Code Section 96.5(7) – Vacation Pay
Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Vicky Travis filed a timely appeal from the June 22, 2010, reference 01, decision that denied benefits for the two-week period that ended May 8, 2010 based on an Agency conclusion that she had received vacation pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on August 13, 2010. Ms. Travis participated. Carly Norris, Board Secretary, represented the employer and presented additional testimony through Lori Roberts, Business Manager. Exhibit One and Department Exhibits D-1 through D-5 were received into evidence. The administrative law judge took official notice of the Agency's record of wages reported by the claimant and benefits disbursed to the claimant. The parties waived formal notice on the severance pay issue. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-09254-JTT.

ISSUES:

Whether Ms. Travis received vacation pay that is deductible from his unemployment insurance benefits.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

Whether Ms. Travis received severance pay that was deductible from her unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Vicky Travis was employed by the Walnut Community School District as the full-time business manager/board secretary until April 26, 2010, when she separated from the employment. Ms. Travis last performed work for the school district on Monday, April 26, 2010. At the time Ms. Travis separated from the employment, she had no remaining vacation pay benefit. Ms. Travis did not receive any vacation pay in connection with her separation from the employment. At the time Ms. Travis separated from the employment she received no

severance pay. Ms. Travis did receive a final paycheck on May 20, 2010 for the net amount of \$1,623.70. The net amount derived from gross wages of \$1,985.92 that the school district owed Ms. Travis for the work she performed between April 1 and April 26, 2010.

Ms. Travis established a claim for unemployment insurance benefits that was effective April 25, 2010 and received benefits. Ms. Travis' weekly benefit amount was set at \$374.00. In addition, for any week in which Ms. Travis was deemed eligible for regular benefits, she would also qualify for an additional \$25.00 in federal stimulus benefits. For the week ending May 1, 2010, Ms. Travis reported \$114.00 in wages and received \$353.00 in regular benefits and \$25.00 in federal stimulus benefits. For the weeks ending May 8, 2010 through June 12, 2010, Ms. Travis received \$374.00 in regular benefits and an additional \$25.00 in federal stimulus benefits. For the weeks ending June 19 and 26, Workforce Development approved \$374.00 in regular benefits, but withheld or offset those benefits against what the Agency deemed an overpayment of benefits. For the week ending July 3, 2010, Workforce Development approved \$374.00 in regular benefits, disbursed \$219.00 of those benefits to Ms. Travis, and offset \$155.00 of the benefits. For the weeks ending July 10, 2010 through August 7, 2010, Workforce Development returned to disbursing full benefits to Ms. Travis.

On April 29, 2010, Workforce Development mailed a notice of claim to the employer. The notice of claim set forth May 10, 2010 as the deadline for filing of the employer's response. Workforce Development received the employer's response by fax on May 7, 2010. The employer did not protest the claim for benefits. The employer indicated on the notice of claim that Ms. Travis had received \$1,264.00 in vacation pay benefits in connection with her separation from the employment. The employer designated April 29, 2010 through May 12, 2010 as the period to which the vacation should be applied when determining Ms. Travis' eligibility for unemployment insurance benefits. The employer also indicated on the notice of claim that Ms. Travis had received \$3,794.00 in severance pay or the equivalent in connection with her separation from the employment. The employer designated May 13, 2010 through June 24, 2010 as the period to which the severance pay should be applied when determining Ms. Travis' eligibility for unemployment insurance benefits. On May 7, 2010, Superintendent Tim Peterson had certified the information as correct. Mr. Peterson is no longer with the school district.

In May 2010, the Walnut Community School District received assistance with payroll matters from a Harlan Community School District employee. The Harlan employee prepared a spread sheet document regarding Ms. Travis' pay. Mr. Peterson apparently relied upon this document when he certified the accuracy of the information the employer submitted in response to the notice of claim.

The employer's witnesses for the appeal hearing were not with the school district at the time of Ms. Travis' separation from the employer, had no role in responding to the notice of claim, and are unable to provide further explanation of the documentation the employer submitted to Workforce Development.

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 Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

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

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

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

c. 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, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

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", "b", or "c", 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.

The weight of the evidence in the record establishes that Ms. Travis received neither vacation pay nor severance pay in connection with her separation from the employment. The weight of the evidence indicates that the information the employer submitted to Workforce Development in response to the notice of claim was erroneous. Because Ms. Travis did not receive vacation pay or severance pay in connection with her separation from the employment, there would no vacation pay or severance pay to deduct from her unemployment insurance benefits. Ms. Travis was eligible for benefits for the two-week period that ended May 8, 2010, provided she was otherwise eligible.

DECISION:

The Agency representative's June 22, 2010, reference 01, decision is reversed. The claimant did not receive vacation pay or severance pay in connection with her separation from the employment. The claimant was eligible for benefits for the two-week period ending May 8, 2010, provided she was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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