

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN L CARTER

Claimant

APPEAL NO. 15A-UI-01392-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PHYSICIANS CLINIC MEDICAL

Employer

OC: 10/19/14

Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Karen Carter filed a timely appeal from the January 21, 2015, reference 03, decision that denied benefits for the week ending October 25, 2014, based on an agency conclusion that she had received vacation pay or was entitled to receive vacation pay for that week that exceeded her weekly benefit amount. After due notice was issued, a hearing was held on February 26, 2015. Claimant participated. Elizabeth “BJ” Gibbs represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-01393-JTT. Exhibits A through D and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

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

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

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Carter was employed by Iowa Physicians Clinic as a full-time Registered Nurse until October 15, 2014. Ms. Carter last performed for work the employer on that day. For the week that ended October 18, 2014, Ms. Carter worked 19.8 hours. Ms. Carter’s hourly wage was \$21.00. Ms. Carter’s regular wages for the week that ended October 18 were \$415.80. At the time Ms. Carter separated from the employment, she had accrued but not yet used 36.7 hours of vacation pay benefit. The gross value of that unused benefit was \$770.70. On October 24, 2014, the employer paid Ms. Carter her wages for the week that ended October 18, 2014. On November 7, 2014, the employer paid Ms. Carter the vacation pay amount.

Ms. Carter established a claim for unemployment insurance benefits that was effective October 19, 2014. Workforce Development Calculated Ms. Carter's weekly benefit amount at \$416.00. Ms. Carter received \$416.00 in benefits for the weeks ending October 25 and November 1, 2014. When Ms. Carter made her claim for the week that ended November 8, 2014, she reported a net vacation pay amount of \$671.00. Ms. Carter did not receive any unemployment insurance benefits for that week. Ms. Carter received \$416.00 in weekly benefits for the 15 subsequent weeks.

On December 8, 2014, Iowa Workforce Development mailed a notice of claim to the employer. The notice of claim contained a December 18, 2014 deadline for the employer's response. Workforce Development received the employer's protest, on the notice of claim form, on December 11, 2014. The employer included information regarding the last week's wages as referenced above. The employer also included information concerning the vacation pay benefit as referenced above. The employer did not designate the period to which the vacation pay should be applied in determining Ms. Carter's unemployment insurance benefit eligibility. Workforce Development used the information provided by the employer to redetermine Ms. Carter's unemployment insurance benefit eligibility.

The initial disbursement of benefits to Ms. Carter did not occur until December 22, 2014, at which time several weeks of benefits were paid to Ms. Carter by direct deposit. These included \$416.00 in benefits for the week that ended October 25, 2014. That disbursement did not include any benefits for the week that ended November 8, 2014. That was the week during which Ms. Carter reported a net vacation pay amount. On January 20, 2015, the Agency took action on the vacation pay issue. The Agency concluded that Ms. Carter was not eligible for benefit for the week that ended October 25, 2014 and that the \$416.00 that had been disbursed for that week constituted an overpayment of benefits. The Agency also retroactively approved \$416.00 in benefits for the week that ended November 8, 2014. Again, that was the week during which Ms. Carter had reported the vacation amount. Though the Agency retroactively approved benefits for that week, the Agency "offset" the benefits for that week and used the \$416.00 in benefits that would otherwise have been disbursed for that week to recovery the \$416.00 in benefits that the Agency had concluded had been overpaid for the week ending October 25, 2014.

REASONING AND CONCLUSIONS OF LAW:

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.

Ms. Carter received \$770.70 in vacation pay benefits that were deductible from her unemployment insurance benefits. The employer made a timely report to Workforce Development concerning the vacation pay that the employer had paid to Ms. Carter in connection with her separation from the employment. Exactly when the employer paid that amount to Ms. Carter is not important. What is important is that the amount was paid in connection with Ms. Carter's separation from the employment. The employer did not designate the period to which the vacation pay should be applied when determining Ms. Carter's unemployment insurance benefit eligibility. Accordingly, the statute cited above required that the entire vacation pay amount be apportioned to the first five working days of the claim, following the last day of the employment. Since the last of the employment was October 15, 2014 and the claim was effective on October 19, 2014, the relevant first five working days were October 20-24, 2014, all of which fell within the benefit week that ended October 25, 2014.

Because the \$770.70 in vacation pay exceeded Ms. Carter's \$416.00 weekly benefit amount for that week, Ms. Carter was not eligible for benefits for that week. Under the law, the vacation pay amount was not deductible from the benefit week that ended November 8, 2014, even though that is the week that Ms. Carter claimed a net vacation pay amount. For future reference, Ms. Carter should always report gross amounts, not net amounts. The overpayment for the week that ended October 25, 2014 has been recovered through the offset of \$416.00 in benefits that would otherwise have been retroactively disbursed to Ms. Carter for the week that ended November 8, 2014.

DECISION:

The January 21, 2015, reference 03, decision is affirmed. The claimant was not eligible for unemployment insurance benefits for the week that ended October 25, 2014 because she received vacation pay that was deductible from her unemployment insurance benefit eligibility for the week that ended October 25, 2014 and the vacation pay amount exceeded the unemployment insurance benefit amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs