

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JESS A ROGERS**  
Claimant

**MEDIREVV INC**  
Employer

**APPEAL 18A-UI-11408-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/07/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2018, (reference 04) unemployment insurance decision that allowed partial benefits for the week ending November 3, 2018 based upon a determination that severance pay and paid time off (PTO) should be deducted from his benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2018. Claimant participated and testified. Employer participated through Human Resource Manager Matt Russel. Dawn Wisman was also present on behalf of the employer but did not participate. Employer's Exhibits 1 and 2 were received into evidence.

**ISSUE:**

Did the claimant receive PTO or severance pay and if so, was it correctly deducted from benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on October 9, 2018. At the time of his separation he was paid 31.59 hours of accumulated but unused PTO at a rate of \$15.95 per hour. Claimant also received severance pay in the amount of \$1,276.00, equivalent to 80 hours, based upon a rate of pay at \$15.95 per hour. There was no requirement that he 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 not correctly deducted after the week ending October 27, 2018.

Iowa Code section 96.5(5) provides:

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 contribution 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.

Iowa Code section 96.5(7) provides:

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

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.

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.

Claimant received PTO in the amount of 31.59 hours and 80 hours of severance pay at his normal hourly rate at the time he was separated from employment. Claimant did not have to sign any type of agreement or relinquish any rights in order to receive this money. Iowa Code

Section 96.5(7)c allows for up to five days of vacation pay to be deducted from benefits. However, 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...” Here, the claimant’s PTO was correctly deducted from his first week of unemployment insurance benefits, the week ending October 13, 2018. However, his PTO in excess of 24 hours was then deducted from a later week. This deduction was improper, as it exceeded the one week limit delineated in Iowa Code Section 96.5(7)d. As such, claimant is entitled to his full benefit amount for the week ending November 3, 2018.

**DECISION:**

The November 19, 2018, (reference 04) unemployment insurance decision is reversed. Claimant’s PTO and severance were not correctly deducted after the week ending October 27, 2018. Claimant is entitled to his full benefit amount for the week ending November 3, 2018, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs