

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LONI J KEAT**  
Claimant

**APPEAL NO. 13A-UI-03552-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES**  
Employer

**OC: 02/17/13**  
**Claimant: Appellant (4)**

Iowa Code Section 96.5(7) – Vacation Pay  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the March 19, 2013, reference 02, decision that she was overpaid \$252.00 in benefits for the two weeks between February 17, 2013 and March 2, 2013 based on a vacation pay issue. After due notice was issued, a hearing was held on April 30, 2013. Claimant participated. Maggie Worrall represented the employer. Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by the claimant and benefits disbursed to the claimant.

**ISSUES:**

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.

Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Loni Keat established a claim for unemployment insurance benefits that was effective February 17, 2013 and received benefits. For the weeks ending February 23 and March 2, 2013, Ms. Keat received weekly benefits of \$150.00, or \$300.00 in total. Ms. Keat reported no wages for those weeks.

Ms. Keat had been discharged from employment with Fareway on February 16, 2013 and had filed her claim for unemployment insurance benefits in response to the separation. On February 19, 2013, Workforce Development had mailed a notice of claim to Fareway with a March 1, 2013 deadline for the employer's response. The employer mailed a response that was postmarked on February 21, 2013. The employer indicated in that response that Ms. Keat was still employed part-time. The employer left blank that area of the notice of claim form that asked for information regarding vacation pay. The employer later submitted an amended protest document that contained changes the employer had made to the document on February 26 2013. The document indicated that Ms. Keat had been discharged on February 16, 2013. The document was still silent on the issue on vacation pay.

On March 12, 2013, Ms. Keat telephoned Workforce Development to report that she had just received a final paycheck from Fareway. Ms. Keat told a Workforce Development representative that the check included compensation for 51 hours of vacation pay. Ms. Keat advised that the check was dated March 2, 2013. Ms. Keat advised that her final rate of pay had been \$9.25 per hour. The total gross dollar value of the vacation pay was \$471.75.

#### **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.

The evidence indicates that Ms. Keat did indeed receive vacation pay from the employer in connection with her separation from the employment. The vacation pay amount was \$471.75. The evidence indicates that the employer did not make a timely designation of the vacation pay amount or the period to which the vacation pay should be applied when determining Ms. Keat's eligibility for unemployment insurance benefits. Accordingly, the law required Workforce Development to apportion the entire vacation pay amount to the first five working days of the claim that immediately followed Ms. Keat's last day in the employment. The last day in the employment was Saturday, February 16, 2013. Ms. Keat's claim for benefits was effective the very next day, Sunday, February 17, 2013. The first five working days during the claim all fell within the benefit week that ended February 23, 2013. Accordingly, the entire vacation pay amount should have been apportioned to the benefit week that ended February 23, 2013. Because the apportioned vacation pay exceeded Ms. Keat's \$150.00 weekly benefit amount, the apportioning of the vacation pay reduced her eligibility for benefits during that to zero. Ms. Keat was not eligible for unemployment insurance benefits for the week that ended February 23, 2013. Because all of the vacation pay benefits should have been apportioned to the one benefit week, Ms. Keat's benefit eligibility for the week that ended March 2, 2013 should have been unaffected by the apportioning of the vacation pay. Ms. Keat was eligible for the benefits she received for the week that ended March 2, 2013, provided she was otherwise eligible.

The \$150.00 in benefits that Ms. Keat received for the benefit week that ended February 23, 2013 constituted an overpayment of benefits that Ms. Keat is required by law to repay. That amount was withheld from benefits that would otherwise have been disbursed to Ms. Keat for the benefit week that ended March 16, 2013. Thus, the overpayment has been recovered.

Ms. Keat was not overpaid benefits for the week ending March 2, 2013 in connection with the apportioning of vacation pay.

**DECISION:**

The Agency representative's March 19, 2013, reference 02, decision is modified as follows. The claimant received vacation pay that was deductible from her unemployment insurance benefit eligibility for the week ending February 23, 2013. The claimant was not eligible for benefits during the week that ended February 23, 2013 based on the apportioning of the vacation pay. The claimant was overpaid \$150.00 in benefits for the week that ended February 23, 2013. The overpayment has been recovered. The claimant's vacation pay was not deductible from benefits for any week other than the week that ended February 23, 2013. The claimant was eligible for \$150.00 in benefits for the week ending March 2, 2013, provided she was otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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