

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BONITA M TIMMERMAN**  
Claimant

**APPEAL 20A-UI-02121-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 02/23/20  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer/appellant, Hillcrest Family Services, filed an appeal from the March 5, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits for the week ending February 29, 2020 due to the receipt of PTO/vacation pay. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2020. The claimant participated personally. The employer participated through Daniel Nettie, director of human resources.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. 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.

**ISSUE:**

Was vacation pay correctly deducted from claimant’s unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 5, 2020, the claimant was separated from employment. Employer paid claimant two weeks’ wages, through February 19, 2020. Claimant’s rate of pay was \$14.04 per hour. She earned \$113.12 per day for working eight hours. Employer also paid claimant for 271.15 hours of unused vacation time for a gross, total amount of \$3,879.87.

Claimant established a claim for benefits effective February 23, 2020.

Claimant’s weekly benefit amount is \$325.00.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay/PTO was correctly deducted from claimant's unemployment insurance benefits.

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(1) provides:

24.13(1) 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 response, 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, the unemployment insurance representative shall determine days 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) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment 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 first day the vacation pay can be applied is the first workday after the separation.** 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.

Effective July 1, 2018, vacation pay is not deductible for any period in excess of one week from unemployment insurance benefits the claimant is otherwise entitled to. The claimant's employment ended during the week ending February 8, 2020. She did not file claims for the weeks ending February 8, 15, or 22, 2020. She established her claim with an effective date of February 23, 2020 and based upon the application of the above stated code section, her PTO was applied to her first week of employment only. In this case, the vacation pay was correctly deducted. Benefits are denied for the week ending February 29, 2020.

**DECISION:**

The March 5, 2020, (reference 02) unemployment insurance decision is affirmed. The vacation pay/PTO was deducted for the correct period.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

May 7, 2020  
Decision Dated and Mailed

jlb/scn