

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KONI S STEELE

Claimant

SMARTSCRIPTS LLC

Employer

APPEAL 22A-UI-14137-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/22

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Ms. Koni Steele, claimant/appellant, appealed the June 2, 2022, (reference 05), unemployment insurance decision that concluded claimant was eligible for a reduced unemployment insurance benefits for the week ending 04/30/22, as records reflect claimant received or is entitled to receive vacation pay, paid time off (PTO), holiday pay, severance pay or separation pay, which is considered wages and claimant is eligible to receive prorated benefits taking into account said payments. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for August 1, 2022, at 11:05AM. Employer, Smartscripts LLC, participated through Ms. Liz Vondracek, party representative. Claimant personally participated. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-14136-DH-T; 22A-UI-14137-DH-T; and 22A-UI-14138-DH-T. Judicial notice was taken of the administrative record, including the appeal and attachments, and DBRO.

ISSUES:

Was severance pay correctly deducted?

Was vacation pay correctly deducted?

Was PTO pay, holiday pay, severance pay, or separation pay correctly deducted?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was a fulltime customer care coordinator with a set scheduled. Her first day with employer was 01/10/22. Claimant's last day of work was on 04/15/22, and it was the date she was laid off from work.

The employer paid claimant a final check on 04/22/22 and the check was included by claimant as one of her attachments to her appeal. This check covered 40.25 hours of work for the pay period of April 3-16, 2022, with claimant earning \$16.00 per hour. The check also covered a PTO payout of 10.56 hours totaling \$168.96, and 40 hours of severance pay totaling \$640.00. Severance pay is generally defined as money paid to an employee who is dismissed because of lack of work or

other reasons beyond the employee's control but does not require anything further in exchange. There was no signed severance agreement nor the release of rights.

The employer did report the vacation/PTO payment but did not designate the period of time to which the vacation pay/PTO was to be applied. Claimant's weekly benefit amount (WBA) is \$335.00. on her claim for unemployment with an original claim date of 04/17/22. Claimant submitted claims for unemployment benefits for a three-week period starting 04/17/22 and ending 05/07/22, being paid \$335.00 for each of the three weeks. Claimant did not report the receipt of any payments for these three benefit weeks.

In companion case 22A-UI-14136-DH-T, the decision finding claimant was not eligible for unemployment insurance benefits for one week ending 04/23/22 was affirmed, holding that the vacation/PTO payout was to be utilized for the benefit week at hand and include severance in an amount to get to forty hours for the week at hand, with excess to carry forward to following weeks.

REASONING AND CONCLUSIONS OF LAW:

The issues are whether severance pay, and vacation/PTO pay were correctly deducted. For the reasons set forth below, the undersigned finds claimant did receive severance pay that did not get correctly deducted from benefits and received vacation/PTO pay that did get correctly deducted from benefits.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

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, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, 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.

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 Admin. Code r. 871-24.18 provides:

871—24.18(96) Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

In the electronic version of the Unemployment Insurance Handbook, it provides:

FULLY DEDUCTIBLE FROM THE BENEFIT PAYMENT

Each dollar you earn reduces your benefit payment by one dollar (dollar-for-dollar).

Income that is 100% deductible includes:

1. Vacation pay and paid time off
2. Severance pay
3. Pension - Only if the employer contributed 100%
4. Retirement Annuity, or any other similar period payment
5. Workers' Compensation (temporary total disability)
6. Paid excused leave (funeral or personal leave)

Example: Your WBA is \$400 and you receive a \$370 vacation payout for the week you are claiming.

$\$400 - \$370 = \$30$. \$30 is the payment amount for the week.

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.

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. It has traditionally excluded from the definition of "severance pay" circumstances involving *quid pro quo* settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. There was no quid pro quo settlement and therefore the severance pay is deductible from her Unemployment Insurance Benefits under Iowa Code section 96.5(5). The amount of severance pay was forty hours totaling \$640.00. Claimant's last day worked was 04/15/22, as depicted in claimant's submitted paystub. Employer first thought it was 04/15/22 but then testified it was 04/08/22. Claimant thought it was 04/15/22 but said if employer's records show the other date, then use their date. The paystub, in showing the breakdown of hours worked and paid and the severance and additional post layoff PTO payment, the last day worked is the same day of being laid off once done working on 04/15/22.

Iowa Code section 96.5(7) provides in part:

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.

Iowa Admin. Code r. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

The general policy underlying the deductibility of vacation pay/PTO from benefit eligibility is "that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor." *Lefebure Corp. v. Iowa Dep't of Job Serv.*, 341 N.W.2d 768, 771 (Iowa 1983); *see also*, 14 A.L.R.4th 1175 §2(a) (1982). Thus, "vacation pay" is deductible because it is considered a form of "wage," which the statute further defines as any "remuneration for personal services . . ." Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer. The law allows employers to designate the period of time to which a lump sum payment is allocated so that claimants have to exhaust their wage substitute payments before drawing benefits. Here, the employer did not designate a time period to which the vacation/PTO pay is to apply and therefore it cannot be applied to more than one week.

As set forth above, and as found in companion case 22A-UI-14136-DH-T: (1) employer paid claimant 10.56 hours of vacation/PTO pay in the amount of \$168.96 which is to be applied only to the benefit week ending 04/23/22; (2) employer paid claimant 40 hours of severance pay in the amount of \$640.00 which is to be applied to benefit weeks such not to exceed forty hours until exhausted; and (3) 10.56 hours of vacation/PTO pay and 29.44 hours of severance pay totaling \$640.00 in unreported earnings were used to calculate benefits for the benefit week ending 04/23/22. This leaves 10.56 hours of unreported severance pay carrying over to the benefit week ending 04/30/22 to be utilized in the calculation of benefits.

Therefore, the calculation of benefits for benefit week ending 04/30/22 with regards to vacation/PTO pay was correct but with regards to severance pay was incorrect. First, all vacation/PTO time was utilized in the prior benefit week and even if not, as set forth above, it

cannot carry over given the circumstances. The carryover balance of 10.56 hours of unreported severance pay in the amount of \$168.96 should have been used to calculate benefits. With the \$168.96 in unreported earnings being less than the \$335.00 WBA +\$15.00 (\$350.00), claimant was eligible for benefits for the benefit week ending 04/30/22. The calculated benefit amount claimant is eligible for is \$335 (the WBA) minus the \$168.96 severance payment. The pro rata benefit amount claimant was eligible for regarding the benefit week ending 04/30/22 is \$166.04.

DECISION:

The June 2, 2022, (reference 05), unemployment insurance decision that concluded claimant was eligible for a reduced unemployment insurance benefits for one week ending 04/30/22 is **AFFIRMED**. Claimant's severance pay and vacation/PTO pay were not reported but only the severance pay was not correctly deducted.

A handwritten signature in blue ink, appearing to read 'D. Hamilton', is written over a horizontal line.

Darrin T. Hamilton
Administrative Law Judge

December 2, 2022
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.