

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN E GIPPER

Claimant

APPEAL NO. 20A-UI-09716-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF INDEPENDENCE

Employer

OC: 03/29/20

Claimant: Respondent (4)

Iowa Code Section 96.5(5) - Severance Pay

Iowa Code Section 96.5(7) – Vacation Pay

Iowa Code Section 96.3(7) - Recovery of Overpaid Benefits

Public Law 116 – 136, Section 2104(b) - Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 29, 2020, reference 02, decision that held the payment the claimant received upon separation was not severance pay and was not reportable as income on the claimant's unemployment insurance claim. After due notice was issued, a hearing was started on September 10, 2020 and concluded on September 29, 2020. Claimant, Brian Gipper participated. Attorney Steven Weidner represented the employer and presented testimony through Jeena Lynch, City Clerk/Treasurer, and Al Roder, City Manager. Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: the claimant's weekly claims (KCCO), regular benefits paid to the claimant (DBRO), and Federal Pandemic Unemployment Compensation benefits paid to the claimant (KPYX).

ISSUES:

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

Whether the claimant received compensatory time pay that is deductible from his unemployment insurance benefits.

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

Whether the claimant received a legal settlement amount in exchange for a waiver of rights, which payment is not deductible from unemployment insurance benefits.

Whether the claimant was overpaid regular unemployment insurance benefits.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Gipper, the claimant, was employed by the City of Independence as a full-time Parks & Recreation laborer until March 26, 2020. Claimant's work hours were 7:00 a.m. to 3:30 p.m.,

Monday through Friday. Claimant's final wage was \$26.67 per hour. The claimant's final paycheck, issued on April 9, 2020, paid the claimant \$757.44 for work the claimant performed Monday, March 23, 2020 through Thursday, March 26, 2020. On April 9, 2020, the employer also paid the claimant \$2,556.36 for 108 hours of vacation pay benefit the claimant had accrued but not yet used. Also on April 9, 2020, the employer paid the claimant \$922.89 for 38.99 hours of "compensatory time" claimant had accrued but not yet used at the time of his separation. During the employment, the claimant accrued compensatory time in lieu of receiving overtime pay.

The claimant established a claim for benefits that was initially deemed effective May 10, 2020. The City of Independence is the sole base period employer. On May 12, 2020, Iowa Workforce Development mailed a notice of claim to the employer's address of record. The notice of claim referenced a maximum liability amount of \$13,468.00. The notice of claim referenced a weekly benefit amount of \$518.00. The employer received the notice of claim on May 14, 2020. On that same day, the employer mailed the notice of claim back to Iowa Workforce Development. The employer marked a box to indicate the employer was not protesting the claim and signed to certify the accuracy of the information the employee provided on the notice of claim. The employer provided no information on the notice claim form regarding hours or wages pertaining to work performed during the week of separation, though the notice of claim form solicited such information. The employer provided no information regarding vacation pay, though the notice of claim form solicited such information. The employer provided no information regarding severance pay, though the notice of claim form solicited such information.

In connection with the separation from the employment, the employer and the claimant entered into a Separation Agreement and General Release wherein the claimant waived rights to pursue causes of action against the employer under a multitude of laws and theories in exchange for a lump-sum payment of \$15,000.00. The claimant signed the agreement on May 20, 2020 and the employer signed the agreement on May 26, 2020. The Iowa Communities Assurance Pool, a self-insurance entity to which the City of Independence belongs, issued payment on June 12, 2020.

On June 10, 2020, the employer participated in a fact-finding interview. At that time, the employer reiterated its desire not to contest the claim for benefits, but inquired about deducting the \$15,000.00 payment from the employer's liability for benefits in connection with the unemployment insurance claim. The employer subsequently provided Iowa Workforce Development with a copy of the Separation Agreement and General Release.

At some point between June 10, 2020 and September 10, 2020, the employer provided information to Iowa Workforce Development regarding vacation pay, compensatory time pay, and final wages.

After the claimant made weekly claims for three weeks in May 2020, he had contact with an Iowa Workforce Development representative who facilitated backdating the effective date of claim to March 29, 2020. Backdating the claim did not change the claimant's weekly benefit amount, did not change the claimant's maximum benefit amount, and did not change the employer's maximum liability on the claim. In June 2020, in connection with backdating the claim, a Workforce Development representative solicited weekly claim information from the claimant for the six weeks between March 29, 2020 and May 9, 2020. The claimant was not asked about and did not mention final wages, vacation pay, compensatory time pay, or the \$15,000.00 legal settlement amount. The claimant received \$518.00 in regular benefits for each of the nine weeks between March 29, 2020 and May 30, 2020. The claimant also received

\$600.00 in Federal Pandemic Unemployment Compensation benefits for each of the nine weeks between March 29, 2020 and May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address the question of whether the claimant received severance pay that is deductible from unemployment insurance benefits.

Iowa Code section 96.5(5) provides, in relevant part, as follows:

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.

...

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. ...

Iowa Administrative Code rule 871-24.13(3)(c) echoes the statute as follows:

(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.

However, Iowa Administrative Code rule 871-24.13(4)(o) provides as follows:

24.13(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

...

o. Payments conditional upon the release of any rights.

The \$15,000.00 payment the employer made to the claimant in exchange for the claimant's waiver of rights to pursue potential causes of action against the employer was not severance pay within the meaning of Iowa Code section 96.5(5) and was not deductible from the claimant's unemployment insurance benefit eligibility.

The administrative law judge will now address the vacation pay and compensatory time pay issues.

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 96.1A, 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 96.1A, 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 96.1A, 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 Administrative Code rule 871-24.16 provides as follows:

24.16(1) If the employer properly notifies 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, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term “vacation pay” shall include paid time off and annual leave payments.

...

24.16(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 during 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.

24.16(4) Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

The vacation pay and its effective equivalent, the compensatory time pay, are deductible from the claimant’s unemployment insurance benefit eligibility. Because the employer did not notify Iowa Workforce Development of these monies within 10 days of the mailing of the notice of claim, the entire combined amount is to be apportioned to the first five working days following March 26, 2020. Hence, the \$3,479.25 is to be apportioned in equal amounts, \$695.85, to March 26, 2020, March 27, March 30, March 31, April 1, and April 2, 2020. Because there was no claim in effect during the week that ended March 28, 2020, the vacation pay and compensatory time pay apportioned to that week have no impact on the claimant’s eligibility for unemployment insurance benefits. However, the amount apportioned to the week that ended April 4, 2020, \$2,783.40, reduced the claimant’s benefit eligibility for that week to zero. The claimant’s receipt of vacation pay and compensatory time pay was not deductible from the claimant’s unemployment insurance benefit eligibility for any week beyond the week that ended April 4, 2020.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits. Because deduction of the apportioned vacation pay and compensatory time pay reduced the claimant’s eligibility for unemployment insurance benefits for the week that ended April 4, 2020 to zero, the \$518.00 in regular benefits the claimant received for that week is an overpayment of benefits that the claimant must repay.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had

been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant was not eligible for regular unemployment insurance benefits for the week that ended April 4, 2020, he was also not eligible for Federal Pandemic Unemployment Compensation benefits for that week. The \$600.00 in FPUC benefits the claimant received for the week that ended April 4, 2020 is an overpayment of benefits that the claimant must repay.

DECISION:

The July 29, 2020, reference 02, decision is modified in favor of the employer/appellant as follows. The claimant did not receive severance pay or the equivalent. The \$15,000.00 legal settlement amount the claimant received in exchange for waiving rights is not deductible from the claimant's unemployment insurance benefit eligibility. The claimant received vacation pay and compensatory time pay that were deductible from his unemployment insurance benefit eligibility for the week that ended April 4, 2020 and exceeded his weekly benefit amount. Accordingly, the claimant was not eligible for unemployment insurance benefits for the week that ended April 4, 2020. The \$518.00 in regular benefits that the claimant received for the week ending April 4, 2020 is an overpayment of benefits that the claimant must repay. The \$600.00 in FPUC benefits that the claimant received for the week that ended April 4, 2020 is an overpayment of benefits that the claimant must repay.



James E. Timberland
Administrative Law Judge

October 1, 2020
Decision Dated and Mailed

jet/sam