

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

LEAH BORN
Claimant

HAWKEYE AREA COMM ACTION PRO
Employer

APPEAL 23A-UI-05277-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/26/23
Claimant: Appellant (1R)**

Iowa Code § 96.5(7) – Deductions to Weekly Benefit Amount

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 10, 2023 (reference 03) unemployment insurance decision that reduced unemployment insurance benefits to the claimant for the week-ending March 11, 2023 noting that she had earned vacation pay that was deductible from her weekly-benefit amount. The parties were properly notified of the hearing. A telephone hearing was held on June 19, 2023. The claimant participated personally. The employer did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 23A-UI-05276-DB-T.

ISSUE:

Was the claimant eligible for benefits for the week-ending March 11, 2023?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits effective February 26, 2023 following a permanent separation from employment with Hawkeye Area Community Action Pro. Her established weekly benefit amount was \$398.00. She separated from employment on March 3, 2023 and earned wages of \$744.00 during the week-ending March 4, 2023. At the end of her employment, the claimant was also paid accrued vacation pay of \$196.98. Claimant was paid her full benefit amount of \$398.00 for the week-ending March 11, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

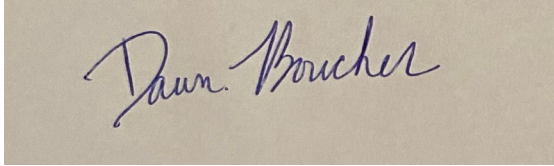
In this case, the claimant had earned vacation pay during the week-ending March 11, 2023 that would be deductible from her weekly-benefit amount. As such, she is entitled to a reduced weekly-benefit amount for the week-ending March 11, 2023. As the claimant's administrative record establishes she was paid her full-benefit amount for the week-ending March 11, 2023, the issue as to whether or not the claimant is overpaid benefits for the week-ending March 11, 2023 will be remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The May 10, 2023 (reference 03) unemployment insurance decision is affirmed. Claimant is eligible for a reduced weekly benefit amount for the week-ending March 11, 2023 as her vacation pay of \$196.98 was deductible from her weekly-benefit amount during that week.

REMAND:

The issue of whether the claimant is overpaid benefits for the week-ending March 11, 2023 is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

June 21, 2023
Decision Dated and Mailed

db/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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.