

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRISTIAN U MENDEZ CHANG
Claimant

OMG MIDWEST INC
Employer

APPEAL 18A-UI-00847-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/27/16
Claimant: Appellant (5)**

Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO
Iowa Admin. Code r. 871-24.16(3) – Vacation Pay
Iowa Admin. Code r. 871-24.13(2)a – Holiday Pay
Iowa Code § 96.5(5) – Severance Pay
Iowa Admin. Code r. 871-24.13(3)c – Severance Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2018, (reference 04) unemployment insurance decision that deducted vacation pay and severance pay from benefits for the week-ending December 24, 2016. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2018. Claimant participated through CTS Language Link Spanish language interpreter Martin. Tonya Mendez participated with claimant and also acted as his representative. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUES:

Did the claimant receive vacation pay or PTO at separation?
Is that amount deductible from benefits, and if so, for what period?
Did the claimant receive holiday pay and if so, was it correctly deducted from benefits?
Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time through Wednesday, December 14, 2016. The employer paid him gross wages of \$480.00 through the last day of work. It paid him severance pay in the amount of \$1400.00, equivalent to 70 hours' pay. He was also paid for accumulated but unused vacation pay/paid time off (PTO) in the amount of \$400.00, equivalent to 20 hours, based upon a rate of pay at \$20.00 per hour. He also received holiday (Christmas) pay of \$160.00, equivalent to 8 hours. The employer did not designate the period of time to which the vacation pay/PTO was to be applied. Claimant's weekly benefit amount (WBA) is \$404.00. Claimant's payment records for the pertinent time period are as follows:

PAYMENT-RECORDS..

BWE-DATE	RPT-CODE	AMT-RP	AMOUNT
12/17/16	WAGE	.00	404.00

12/24/16	VACATION	999.00	.00
12/31/16	WAGE	.00	404.00
01/07/17	WAGE	.00	404.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes benefits were properly withheld for the week-ending December 24, 2016, due to the receipt of holiday pay, vacation pay and severance pay.

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.

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.

(Emphasis added.)

Iowa Admin. Code r. 871-24.13(2)a provides:

(2) *Deductible payments from benefits.* The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. *Holiday pay.* However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

Iowa Code section 96.5(5)a(1) 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.

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 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.

The Unemployment Insurance Handbook at page 21 provides:

FULLY DEDUCTIBLE FROM THE BENEFIT PAYMENT

Each dollar the individual earns reduces their benefit payment by one dollar (dollar-for-dollar).

- Vacation pay and paid time off
- Severance pay
- Pension, retirement, annuity, or any other similar period payment
- Workers' Compensation (temporary total disability)
- Paid excused leave (funeral or personal leave)

Example: An individual's WBA is \$400 and they receive a \$370 vacation payout for the week they are claiming.

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

Given the evidence, the reporting and payment records should appear (broken down by type for explanatory purposes only) as follows:

PAYMENT-RECORDS..

BWE-DATE	RPT-CODE	AMT-RP	AMOUNT
12/17/16	WAGE (24 HR)	480.00	.00
12/17/16	VAC (16 HR)	320.00	.00
12/24/16	VAC (4 HR)	80.00	.00
12/24/16	SEV (36 HR)	720.00	.00
12/31/16	HOL (8 HR)	160.00	.00
12/31/16	SEV (32 HR)	640.00	.00
01/07/17	SEV (2 HR)	40.00	364.00

DECISION:

The January 9, 2018, (reference 04) unemployment insurance decision is modified without change in effect. Benefits were properly withheld for the week-ending December 24, 2016, due to the receipt of holiday pay, vacation pay and severance pay.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs