

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

REBECCA A WILSON  
526 SW DES MOINES ST  
ANKENY IA 50021

VODACI TECHNOLOGIES  
11111 AURORA AVE  
URBANDALE IA 50322-7904

Appeal Number: 04A-UI-01117-B4T  
OC: 12/28/03 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-7 – Whether Claimant Reported or Incorrectly Reported Vacation Pay  
Section 96.3-7 – Whether Claimant is Overpaid Benefits

STATEMENT OF THE CASE:

Rebecca A. Wilson appealed from an unemployment insurance decision dated January 26, 2004, reference 02, that held, in effect, the claimant was overpaid benefits in the amount of \$157.00 for the one week between January 4, 2004 and January 10, 2004, because she failed to report or incorrectly reported vacation pay from Vodaci Technologies.

A telephone conference hearing was scheduled and held on February 18, 2004. Rebecca A. Wilson participated. Darci Robinson, Human Resource Coordinator participated on behalf of Vodaci Technologies.

Official notice was taken of the unemployment insurance decision bearing reference 02 together with the pages attached thereto (7 pages in all).

#### FINDINGS OF FACT:

Rebecca A. Wilson was employed as a sales representative with Vodaci Technologies from March 17, 2003 through December 29, 2003. Following the termination of the claimant's employment, she filed a claim for benefits having an effective date of December 28, 2003. Subsequently, a notice of claim was mailed to the employer Vodaci Technologies on January 2, 2004. A timely response by the employer was filed which indicated the claimant was discharged allegedly for misconduct on December 29, 2003. Further, the protest indicated the claimant was paid vacation pay in the amount of \$253.92 for January 5, 2004 and January 6, 2004. In addition, severance pay in the amount of \$634.80 was paid to the claimant to be applied to the period from December 29, 2003 through January 2, 2004.

The administrative records disclose that the claimant reported \$634.00 as wages for the benefit week ending January 3, 2004. In addition, the claimant reported \$231.00 as wages for the benefit week ending January 10, 2004.

The claimant does not properly identify the amounts received by her for vacation pay and severance pay as reported by the employer on the protest filed.

#### REASONING AND CONCLUSIONS OF LAW:

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.

#### Section 871 IAC 24.16(1)

If the employer properly notified 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.

The evidence in the record clearly establishes that the claimant received the vacation pay in the amount of \$253.92 to be applied to January 5, 2004 and January 6, 2004. In addition, the claimant receives severance pay in the amount of \$634.80 to be applied to the period from December 29, 2003 through January 2, 2004.

Proper application of the vacation pay and severance pay would preclude the claimant from receiving benefits for the two benefit weeks ending January 10, 2004.

The claimant received benefits in the amount of \$157.00 for the benefit week ending January 10, 2004. Set amount was offset during the benefit week ending January 24, 2004 and has been recovered by the Workforce Development Department.

The administrative law judge concludes that Rebecca A. Wilson was overpaid benefits in the amount of \$157.00 for the one week between January 4, 2004 and January 10, 2004 within the

intent and meaning of Iowa Code Section 96.5-7. The overpayment amount of \$157.00 has been recovered by an offset from the benefit week ending January 24, 2004.

DECISION:

The unemployment insurance decision dated January 26, 2004, reference 02, is affirmed. Rebecca A. Wilson was overpaid benefits in the amount of \$157.00 for the benefit week ending January 10, 2004, which has been recovered by an offset during the benefit week ending January 24, 2004.

kjf/b