

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMIE L PANGERL**  
Claimant

**APPEAL NO: 07A-UI-08469-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HORIZONS UNLIMITED OF PALO ALTO CO**  
Employer

**OC: 07/29/07 R: 01  
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

Jamie L. Pangerl (claimant) appealed a representative's August 27, 2007 decision (reference 02) that concluded the claimant was ineligible for benefits for the week ending August 4, 2007 due to receipt of vacation pay from Horizons Unlimited of Palo Alto County (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 3, 2007 in conjunction with another appeal, 07A-UI-08458-DT. The claimant participated in the hearing. Debra Hughes appeared on the employer's behalf with three other witnesses, Pam Beschorner, Kate Simonson, and Ed Hannagan. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant's vacation pay properly allocated and deducted?

**FINDINGS OF FACT:**

The claimant's normal work schedule had been 8:00 a.m. to 8:00 p.m. every other weekend and then two or three 4:00 p.m. to 12:00 p.m. shifts during the week. Her last day worked for the employer was July 23, 2007. She did not work the remainder of her shifts that week. She had been working at an hourly rate of \$8.25 per hour. As of July 23 she had accumulated 33.0 hours of vacation and 8.0 hours of personal discretionary time, in addition to other time designated as sick time. A check was written to the claimant including the vacation and personal time on August 14, although as of the date of the hearing the claimant had not yet arranged to pick up the check.

The claimant established an unemployment insurance benefit year effective July 29, 2007. Her weekly benefit amount was calculated to be \$237.00. Her first weekly claim was for the week ending August 4 in which she reported no income or vacation pay. The employer timely responded to the notice of claim on August 10, reporting vacation pay paid to the claimant in the amount of \$536.25 which it attributed to the period from July 26 through August 4, 2007; however, this amount also included an amount of sick pay.

**REASONING AND CONCLUSIONS OF LAW:**

If vacation pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

Iowa Code § 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.

871 IAC 24.16(3) provides in pertinent part:

(3) . . . However, if the individual does not claim benefits after [separation] 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 claimant did not establish her claim for unemployment insurance benefits until after the end of the normal workweek following her last day worked; therefore, her vacation pay is all attributable to the week prior to her claim, and the vacation pay is not deductible from any of the claimant's weekly claims.

**DECISION:**

The representative's August 27, 2007 decision (reference 02) is reversed. The vacation pay was not correctly deducted. The vacation pay is applicable only to the week ending July 28, 2007, prior to the establishment of the claimant's claim for benefits. Benefits are allowed, provided the claimant is otherwise eligible, effective July 29, 2007.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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