

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

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Appeal Number: 05A-UI-00166-LT
OC: 03-14-04 R: 01
Claimant: Appellant (4)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the December 21, 2004, reference 02, decision that deducted vacation pay from benefits for the week ending November 27, 2004. The timeliness issue on the hearing notice was not discussed in hearing since it was determined prior to the hearing the appeal deadline was December 31, 2004, a state holiday for New Year's Day, which fell on a Saturday, thus allowing claimant to file her appeal no later than Monday, January 3, 2005. Claimant faxed her appeal on Saturday, January 1, 2005. After due notice was issued, a hearing was held on January 21, 2005. Claimant did participate. Employer did not participate. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed through Tuesday, October 26, 2004 and received \$384.62 in gross wages for the initial two work days of that pay period beginning Sunday, October 24, 2004 based upon a \$50,000.00 per year salary (\$20.04 per hour). At the time of her separation, she was entitled to 46.2 hours of vacation. After the deduction of gross wages from the November 6, 2004 payroll check (\$1,032.52 - \$384.62), claimant received gross vacation pay of \$647.90 (payment for 26.95 of 46.2 hours with a remainder of 19.25 hours or \$462.77 of vacation pay due). On the November 20, 2004 payroll check, she was paid the gross amount of \$1,032.52. Deduction of the remaining 19.25 hours of vacation pay left claimant with total gross severance pay of \$569.75 for 23.7 hours of severance ($\$1,032.52 - \$462.77 = \$569.75 / \$24.04 = 23.7$ hours). Claimant received no further funds from employer although employer claimed in writing it would pay her "thru (sic) the end of November." (Claimant's Exhibit A) The employer did designate a period of time, albeit incorrect, to which the vacation pay was to be applied.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay was deducted for an incorrect period.

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.

871 IAC 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.

Because the employer did designate a time period to which the vacation pay is to apply, the entire amount shall be deducted from benefits. However, employer's calculations were incorrect. The vacation pay of 46.2 hours (or 5.78 days) and the remaining payment for 23.7 hours of severance (or 2.96 days) totals 69.9 hours (or 8.74 days) to be deducted from benefits. The first eight days are deducted for the period from October 27 through November 5, 2004 and the remaining \$142.32 (.74 days) deducted from benefits for the week beginning November 7 leaves claimant entitled to partial benefits of \$158.00 for the week ending November 13, 2004 (\$300.00 WBA - \$142.00 remaining severance pay = \$158.00 partial benefit entitlement).

The Iowa Workforce Development Unemployment Insurance Appeals Bureau cannot adjudicate the dispute over the promised severance pay and claimant has been referred to Iowa Workforce Development, Division of Labor, Wage Claims.

DECISION:

The December 21, 2004, reference 02, decision is modified in favor of the appellant. The vacation pay was deducted for an incorrect period.

dml/pjs