

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LYNNE D WALDRON
Claimant

APPEAL NO. 19A-UI-05371-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWO RIVERS INSURANCE COMPANY INC

OC: 06/02/19
Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Lynne Waldron filed a timely appeal from the June 24, 2019, reference 04, decision that denied benefits for the week that ended June 8, 2019, based on the deputy's conclusion that Ms. Waldron received vacation pay or was entitled to receive vacation pay that was deductible from her unemployment insurance benefits for that week. After due notice was issued, a hearing was held on July 30, 2019. Ms. Waldron participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: database readout (DBRO), notice of claim/protest, June 19, 2019 worksheet of reportable Income, and Calculation of reportable income received.

ISSUE:

Whether the claimant received vacation pay that is deductible from the claimant's unemployment insurance benefits for the week that ended June 8, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lynne Waldron established an original claim for benefits that was effective June 2, 2019. Iowa Workforce Development set Ms. Waldron's weekly benefit amount at \$256.00. At the time Ms. Waldron established her claim for benefits, she had most recently been employed by Two Rivers Insurance Company, Inc. Ms. Waldron worked for that employer as a part-time, Assistant Accountant and Customer Service Representative. Ms. Waldron usually worked for the employer three days per week for a total of 24 hours per week. Ms. Waldron's final wage was at or about \$17.88 per hour. The employer had Ms. Waldron leave the workplace on May 21, 2019, but paid her regular wages through May 31, 2019. At the time Ms. Waldron separated from the employer she had \$2,519.84 in paid time off (PTO) that she had earned but not yet used.

On June 5, 2019, Iowa Workforce Development mailed a notice of claim to the employer regarding Ms. Waldron's claim. The notice of claim contained a June 17, 2019 deadline for the employer's protest/response. On June 10, 2019, the employer faxed the notice of claim form back to Iowa Workforce Development. The employer indicated on the notice of claim form that

the employer was not protesting the claim. The employer omitted reference to purported vacation/paid time off, but provided May 31, 2019 as the last day of the employment.

On June 19, 2019, an Iowa Workforce Development deputy investigated the issue of whether Ms. Waldron had received vacation pay/paid time off and/or severance pay that was deductible from her unemployment insurance benefits. The employer told the Agency representative that the employer paid \$2,519.84 in paid time off benefit to Ms. Waldron in connection with the separation. Ms. Waldron did not have her paystubs available at the time and told the deputy she did not recall being owed paid time off. However, Ms. Waldron now confirms that the employer did indeed pay her \$2,519.84 in paid time off, which payment was deposited in Ms. Waldron's bank account at the end of May 2019. Based on the information supplied by the employer, the deputy concluded that Ms. Waldron had received \$2,520.00 (rounded) in vacation pay that was deductible from her unemployment insurance benefits for the week that ended June 8, 2019 and reduced Ms. Waldron's benefit eligibility for that week to zero.

REASONING AND CONCLUSIONS OF LAW:

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 96.19, 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. 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" 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 96.19, 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.

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.

Paid Time Off (PTO) is treated as vacation pay and is fully deductible from unemployment insurance benefits. See Iowa Administrative Code rule 871-24.13(3)(b) and 871-24.16.

The weight of the evidence establishes that Ms. Waldron did indeed receive vacation pay/PTO that was deductible from her unemployment insurance benefits for the week that ended June 8, 2018. Based on Ms. Waldron's hourly wage of \$17.88, and pursuant to the statutory requirements for factoring vacation pay when calculating unemployment insurance benefits, the amount of vacation pay to be apportioned to each Monday-Friday work day in the first week of the claim was \$143.04 (8 hours x \$17.88). The total amount to be apportioned to that first week was \$715.20. Because the amount of vacation pay apportioned to that week equaled, and indeed exceeded, the \$256.00 weekly benefit amount, Ms. Waldron was not eligible for unemployment insurance benefits for the week that ended June 8, 2019.

DECISION:

The June 24, 2019, reference 04, decision is affirmed. The claimant received vacation pay that was deductible from her unemployment insurance benefits for the week that ended June 8, 2018. Because the apportioned vacation pay equaled or exceeded the weekly unemployment insurance benefit amount, the claimant was not eligible for benefits for the week that ended June 8, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs