

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY M REIMAN
Claimant

APPEAL NO. 08A-UI-01531-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLAY COUNTY FARM BUREAU
Employer

**OC: 12/30/07 R: 01
Claimant: Appellant (4)**

Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Amy M. Reiman (claimant) appealed a representative's February 4, 2008 decision (reference 02) that concluded the claimant was overpaid benefits for the two-week period ending January 12, 2008 due to receipt of vacation pay and severance pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2008. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on February 25, 2008. It indicated that Kevin Kies would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Kies was not available; therefore, the employer did not participate in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's vacation pay properly allocated and deducted? Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked part time (20 hours per week) as office administrator of the employer's county farm bureau federation; she had also worked part time (20 hours per week) as a sales associate for an insurance agent who had shared an office with the employer. Her employment with the insurance agent ended as of December 28, as the agent closed his business as of that date. She received no severance pay or vacation pay relating to the ending of her employment with the insurance agent.

Her employment with the employer as office administrator was to have continued on the part-time basis and her hourly rate of \$11.00. However, on January 4, 2008 she was informed that this employment was being terminated as of that date. She received regular pay of \$11.00 per hour for four hours per day for the four workdays that week, and holiday pay of \$44.00 for

the four hours on the January 1, 2008 holiday, for a gross pay for the week of \$220.00. She was also given two checks of \$660.00 gross each, representing her accrued 120 hours (six weeks) of vacation.

The claimant established an unemployment insurance benefit year effective December 30, 2007. Her weekly benefit amount was calculated to be \$298.00. She filed two weekly claims, one for the week ending January 5, 2008 for which she reported wages of \$220.00 and received a reduced benefit of \$152.00, and one for the week ending January 12, 2008 for which she reported no wages or vacation pay and so received benefits of \$298.00.

Upon the filing of the claimant's claim for benefits, on January 7, 2008 the employer was sent a notice of the claim; on January 17 the employer responded by reporting the claimant had received severance pay of \$88.00 for January 3 and January 4, and that she had received vacation pay of \$1,320.00 in vacation pay, which it allocated from January 7 through February 16, 2008.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay, holiday pay, or severance 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 section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:
 - a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
 - b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
 - c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be

charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

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 24.13(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.

The claimant did not receive "severance pay" separate from being paid for her scheduled 16 hours of work the week ending January 5, 2008. She was also paid for four hours of "holiday pay" for that week. However, the \$220.00 reported by the claimant for that week was the entire amount she was paid in all wage forms for that week; there was no additional severance, vacation, or holiday pay paid in addition to what was included in the \$220.00. Therefore, she was not overpaid unemployment insurance benefits for that week.

For the week ending January 12, 2008 the claimant had been paid vacation pay of which 20 hours, or \$220.00, was properly to have been allocated. She was therefore only entitled to partial benefits for that week in the amount of \$78.00. (\$298.00 - \$220.00). Likewise, this same amount would have been attributable to each of the remaining five weeks through the week ending February 16, 2008 had the claimant filed weekly claims for those weeks.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant received some benefits for the week ending January 12, 2008 to which she was not entitled due to the allocation of her vacation pay. Those excess benefits must be recovered in accordance with the provisions of Iowa law. However, rather than the \$308.00 as determined by the representative's decision for the two weeks, the overpayment is only the difference between the claimant's benefits received (\$298.00) and the amount to which she was entitled (\$78.00) for the week ending January 12, a net difference of \$220.00.

DECISION:

The representative's February 4, 2008 decision (reference 02) is modified in favor of the claimant. The claimant did not receive separate severance pay or holiday pay, and was not overpaid benefits for the week ending January 5, 2008. The vacation pay was properly allocated and deductible at the rate of \$220.00 for six weeks, including the benefit week ending January 12, 2008. The claimant is overpaid benefits in the amount of \$220.00 for that week.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css