

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

BARBARA A TUHN
400 S GEORGIA ST
JEFFERSON IA 50129-2319

GREENE COUNTY MEDICAL CENTER
ATTN CONTROLLER
1000 W LINCOLNWAY
JEFFERSON IA 50129

AMENDED

Appeal Number: 06A-UI-07074-JTT
OC: 06/11/06 R: 01
Claimant: Appellant (4R)

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)

Section 96.3(7) – Overpayment
Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Barbara Tuhn filed a timely appeal from the July 5, 2006, reference 02, decision that she had been overpaid benefits of \$141.00 for the benefit week ending June 2006 due to failure to report or incorrectly reporting vacation pay from Greene County Medical Center. After due notice was issued, a hearing was held on July 25, 2006. Ms. Tuhn participated. Director of Human Resources Ray Holtorf represented the employer and presented additional testimony through Maggi Abernathy. The administrative law judge took official notice of the Agency's administrative file, including the timely protest filed by the employer. Claimant's Exhibits A and B were received into evidence.

ISSUES:

1. Whether the employer made a timely designation of the period to which accrued vacation pay was to be applied.
2. Whether Iowa Workforce Development appropriately determined the period to which accrued vacation pay should be applied.
3. Whether the claimant was overpaid benefits of \$141.00 for the benefit week that ended June 24, 2006.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 12, 2006, Barbara Tuhn separated from her employment at Greene County Medical Center. Ms. Tuhn's hourly wage was \$10.12. At the time of separation, Ms. Tuhn had accrued Paid Time Benefits (PTB) equivalent to 30.7 hours' wages, or \$310.68, and the employer owed Ms. Tuhn wages for seven hours' work, or \$70.84.

On June 13, 2006, Iowa Workforce Development mailed a notice of claim to the employer. The notice contained a June 23, 2006, deadline for the employer's response. On June 20, 2006, Director of Human Resources Ray Holtorf completed the employer's protest and entered information regarding benefits to be paid to Ms. Tuhn in the space provided on the protest form. Mr. Holtorf indicated that Ms. Tuhn was entitled to \$310.00 vacation pay to be applied to the period of June 16-30, 2006. On June 20, the employer submitted the protest form to Iowa Workforce Development by fax.

On June 30, the employer paid Ms. Tuhn for gross wages of \$310.68 for her accrued PTB or vacation pay. On the same day, the employer paid Ms. Tuhn gross wages of \$70.84 for seven hours of work she had performed prior to the separation.

Ms. Tuhn established a claim for benefits that was effective June 11, 2006 and has received benefits. Iowa Workforce Development has calculated Ms. Tuhn's maximum weekly benefit allowance to be \$290.00.

Ms. Tuhn's reported wages were as follows. For the benefit week that ended June 17, Ms. Tuhn reported \$853.00 in wages. For the benefit week that ended June 24, Ms. Tuhn reported no wages. For the benefit week that ended July 1, Ms. Tuhn reported \$70 wages and \$310 vacation pay. The \$70 was wages earned prior to the separation from employment. The \$310 represented the entire amount of the vacation pay. For the benefit weeks ending July 8-22, Ms. Tuhn reported no wages.

Ms. Tuhn received benefits as follows. For the week ending June 17, Ms. Tuhn received no benefits because her reported wages exceeded her weekly benefit amount. For the benefit week that ended June 24, the Agency paid Ms. Tuhn reduced benefits of \$257.00 because the Agency "offset" \$33.00 to be applied toward a prior overpayment from 1992. For the benefit week that ended July 1, the Agency reduced Ms. Tuhn's weekly benefit amount by \$141.00 to reflect the portion of the vacation pay designated by the employer to be applied to that benefit week. For the benefit week that ended July 1, the Agency further reduced the benefits paid out to Ms. Tuhn by \$141.00 to reflect the portion of the vacation pay designated by the employer to be applied to the benefit week that ended June 24. This second reduction during the week that ended July 1 was an "offset" against the benefits Ms. Tuhn had received during the week that

ended June 24. The Agency disbursed \$8.00 in benefits to Ms. Tuhn for the benefit week that ended July 1. For the benefit week that ended July 8, the Agency disbursed the full weekly benefit allowance to Ms. Tuhn.

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.

The evidence in the record establishes that the employer made a timely designation of the period to which Ms. Tuhn's vacation benefit pay was to be applied. The Agency correctly allocated the vacation pay to the appropriate period designated by the employer. The evidence indicates that the \$33.00 offset taken from Ms. Tuhn's benefits during the week that ended June 24 was applied toward a prior overpayment from 1992. The Agency correctly ignored the \$70.00 in wages Ms. Tuhn reported for the week that ended July 1 because these wages were earned either prior to the claim being established or during the first week of the claim. The evidence indicates that Ms. Tuhn was in fact overpaid \$141.00 for the benefit week that ended June 24 because Ms. Tuhn had received benefits for that week that did not reflect the \$141.00 in vacation pay the employer had designated for that week. However, this \$141.00 overpayment was resolved by the offset taken from the following week's benefit allowance. Ms. Tuhn owes the Agency nothing.

DECISION:

The Agency representative's decision of July 5, 2006, reference 02, is affirmed, but modified as follows. The claimant was overpaid \$141.00 for benefit week that ended June 24. However, an equivalent amount has been offset from the claimant's subsequent week's benefits and the claimant now owes the Agency nothing. The \$33.00, which was offset for the week ending June 24, 2006 was applied to a prior overpayment from 1992. The claimant's overpayments have been paid in full.

jt/pjs/pjs