

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDIE R ROSS

Claimant

APPEAL 17A-UI-07768-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REASONER'S GARAGE INC

Employer

OC: 06/25/17

Claimant: Appellant (2)

Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 25, 2017, (reference 04) unemployment insurance decision that deducted severance pay from benefits for the one week ending October 7, 2017. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2017. Claimant participated personally. Her son, Waylon Hill, observed. Employer participated through secretary Dan Reasoner.

ISSUES:

Did the claimant receive severance pay or PTO at separation?
Is that amount deductible from benefits, and if so, for what period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on June 23, 2017. The last day of work was June 23, 2017. At the time of separation, she received a bonus for service already performed in the amount of \$6,725.47. Employer did not intend for the payment to be a severance or dismissal payment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not receive a severance payment and the payment was not correctly deducted from benefits.

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, 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.

Iowa Admin. Code r. 871-24.13(4)b provides:

(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

In this case, employer paid claimant a bonus upon her separation for service already performed. The bonus shall not be deducted from unemployment benefits claimant is otherwise entitled to receive under this chapter.

DECISION:

The July 25, 2017, (reference 04) unemployment insurance decision is reversed. The payment claimant received was an earned bonus and not severance or dismissal pay. The payment was incorrectly deducted from benefits for the one week ending October 7, 2017.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs