

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ROCHELLE D ADKINS

Claimant

APPEAL 22A-UI-19857-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINCOLN SAVINGS BANK

Employer

OC: 10/30/22

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On December 17, 2022, Rochelle D. Adkins (claimant) filed an appeal from the December 15, 2022, reference 05, unemployment insurance decision that deducted vacation pay/PTO from benefits during the week ending November 5, 2022, and denied benefits for that week. After due notice was issued, a telephone conference hearing was held on January 17, 2023, and consolidated with the hearings for appeals 22A-UI-19858-SC-T, 22A-UI-19859-SC-T, and 22A-UI-19860-SC-T. The claimant participated personally. Lincoln Savings Bank (employer) did not respond to the hearing notice and did not participate. The claimant's Exhibit A was admitted into the record. The claimant's Exhibit B was not admitted into the record because it was not relevant to the pending decisions. The administrative law judge took official notice of the claimant's claim history and the fact-finding documents.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant was separated from employment on October 31, 2022, which was also their last day worked. The claimant filed their original claim for unemployment insurance benefits effective October 30, and the weekly benefit amount (WBA) is \$551.00.

The claimant filed weekly claims for unemployment insurance benefits for the two weeks ending November 12. The claimant reported \$187.00 in wages earned on October 31 when filing the weekly claim for the week ending November 5. The claimant received a reduced benefit amount of \$501.00 for that week. The claimant did not report any wages or vacation during the week ending November 12 and received the entire WBA of \$551.00.

The employer protested the claim on November 2 and reported paying the claimant a lump sum of severance pay.¹ However, the employer did not report or designate a timeframe for any vacation pay/PTO that was paid to the claimant upon separation.

On November 15, the claimant received their final paycheck for the pay period from October 16 through October 31. (Exhibit A.) Included in that paycheck was a PTO payout of 40 hours for a total of \$937.20. The claimant had not reported any vacation pay/PTO when filing the claim.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the vacation pay/PTO was deducted for the correct period. Benefits are denied for the week ending November 5, 2022.

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" (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, **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.

¹ The unemployment insurance decision dated December 15, 2022, reference 04, concluded the claimant did not receive severance pay as defined by Iowa unemployment insurance law.

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.

[Emphasis added.]

Iowa Admin. Code r. 871-24.16 provides, in relevant part:

(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.** [Emphasis added].

(4) Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

The general policy underlying the deductibility of vacation pay/PTO from benefit eligibility is “that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor.” *Lefebure Corp. v. Iowa Dep’t of Job Serv.*, 341 N.W.2d 768, 771 (Iowa 1983); see also, 14 A.L.R.4th 1175 §2(a) (1982). Thus, “vacation pay” is deductible because it is considered a form of “wage,” which the statute further defines as any “remuneration for personal services . . .” Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer.

In this case, the claimant claimed benefits during the week in which they worked their day. Therefore, the vacation payout must be deducted. However, it will only be deducted from the

first week of the unemployment insurance benefits. The claimant received over \$900.00 in gross wages, including vacation pay/PTO and earned wages, for all five workdays of the week ending November 5, 2022. The wages paid exceed the claimant's WBA plus fifteen dollars and they are not eligible for benefits for the week ending November 5, 2022.

DECISION:

The December 15, 2022, reference 05, unemployment insurance decision is AFFIRMED. The vacation pay/PTO was deducted for the correct period. The claimant is not eligible for benefits during the week ending November 5, 2022.



Stephanie R. Callahan
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

February 21, 2023
Decision Dated and Mailed

src/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.