

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L BARTLING
Claimant

APPEAL NO. 14A-UI-01596-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/TOLEDO
Employer

OC: 01/19/14
Claimant: Appellant (4)

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 12, 2014, reference 01, that concluded she was ineligible for benefits for due to the receipt of vacation pay. A telephone hearing was held on March 19, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible vacation pay and was it deducted correctly?

FINDINGS OF FACT:

The claimant worked for the employer from February 7, 1984, through January 16, 2014. The claimant had \$2,185.68 in unused vacation pay at the time she separated from employment. The claimant's rate of pay was \$22.80 per hour.

The employer informed the claimant that she could roll over all or part of her unused vacation pay tax-free into her deferred compensation 457/401a account. She requested that \$2,000 in unused vacation pay be transferred to her deferred compensation account. As a result, on the claimant's final paycheck issued on January 21, 2014, the \$2,000 was a deduction from her paycheck. That money was not included in the final paycheck, and there are penalties for withdrawing money from a deferred compensation account prior to retirement or certain emergencies. She was paid \$185.68 for the remaining unused vacation pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 19, 2014. Her week benefit amount was \$408. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer reported the claimant had received \$2,185.68 in vacation pay. The employer did not designate the number of days or hours of vacation pay received by the employer.

REASONING AND CONCLUSIONS OF LAW:

When an employer make a payment to a claimant for vacation pay, it must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation pay shall be applied to the one-week period after the claimant's last day worked, converting the amount of vacation pay to eight hours for a normal workday and five work days for a normal work week. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5-7; 871 IAC 24.16.

The question in this case is whether the employer has made a payment for vacation pay to an employer when unused vacation pay is transferred tax-free to the employee's deferred compensation account. IRS Rules allow employees to transfer unused vacation pay into a deferred compensation 457 plan at the time of separation from employment. 26 CFR §1.457-4.

While I have not been able to find any case law dealing with this issue, the United States Department of Labor has provided some guidance in a related issue involving the lump-sum rollover of a pension pay into an eligible retirement account. According to Unemployment Insurance Program Letter NO. 22-87, Change 1 (June 19, 1995), if a rollover from a qualified trust into an eligible retirement plan is not subject to Federal income tax, then it is not considered to be "received" by the individual for purposes of Section 3304(a)(15), FUTA. I conclude that this same reasoning should apply in this case because the \$2,000 of the unused vacation was transferred tax-free to the claimant's deferred compensation account and was not available to the claimant as a wage substitute, which is the purpose for the deduction of vacation pay.

Since the claimant's rate of pay was \$22.80 per hour, the remaining \$185.68 would represent 8.14 hours of vacation pay. Eight hours of vacation pay \$182.40 would be applied to January 17, and the remaining \$3.68 would be applied to January 20. As a result, the claimant would be eligible for \$404 in benefits for the week ending January 25, 2014.

DECISION:

The unemployment insurance decision dated February 12, 2014, reference 01, is modified in favor of the claimant. The claimant is eligible for \$404 in benefits for the week ending January 25, 2014.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs