

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ELIZABETH A ASHMORE**  
Claimant

**APPEAL NO: 19A-UI-02946-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIRECTECH, LLC**  
Employer

**OC: 02/17/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO  
Iowa Code § 96.5(5) – Wages Earned  
Iowa Admin. Code r. 871-24.13(3) -Deductible Payments from Benefits

**STATEMENT OF THE CASE:**

The claimant, Elizabeth A. Ashmore, appealed the reference 03 initial decision dated March 28, 2019, which concluded she was overpaid benefits for the week ending March 2, 2019 because she failed to report vacation pay from Directech LLC. There is no evidence in the administrative record to reflect a fact-finding interview was conducted on the issue, with the employer included. There is no other initial decision which references vacation pay.

A telephone hearing was scheduled and conducted on April 26, 2019. The claimant participated personally and was the only party included. Following testimony, the administrative law judge concluded additional evidence was needed to address the issues on appeal, and that the employer should be afforded its due process right to participate, given possible implications with chargeability. Specifically issues needing resolution were wages, commission, and vacation pay earned and paid at the claimant's separation.

After proper notice to both parties, a second telephone hearing was conducted on May 21, 2019. The claimant participated personally. The employer did not respond to the notice of hearing, and did not participate.

The administrative law judge took official notice of the administrative records including the fact-finding documents and claim for benefits. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant overpaid benefits?

Did the claimant receive vacation pay, and if so, was it properly deducted?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a media account specialist and was separated from employment at Directech LLC. on February 22, 2019. The claimant earned \$8.00 per hour plus commission. She had worked almost 39 hours at the time she was discharged and was paid for 40 hours of pay that week.

For the week ending February 23, 2019, the claimant reported she earned \$320.00 in wages based upon 40 hours at her hourly rate of pay of \$8.00 per hour. The claimant knew she would also receive 4 hours of accumulated but unused vacation time. The employer paid the claimant's vacation pay at a rate of \$12.50 per hour. The claimant received the \$50.00 in vacation pay on April 8, 2019. She did not report the vacation pay when filing her weekly continued claims for benefits. The claimant's weekly benefit amount is \$297.00.

Rather, the claimant incorrectly reported her commission pay of \$448.00 as "vacation pay" when she filed her claim for benefits for the week ending March 9, 2019. The commission pay was earned before the claimant established a claim for benefits.

Upon review of the claimant's weekly continued claim for the week ending March 9, 2019, it was determined the claimant was overpaid benefits in the amount of \$297.00 for the week ending March 2, 2019, which is the week vacation pay would have been applied.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant has not been overpaid benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

### **7. Recovery of overpayment of benefits.**

a. 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.

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" or paragraph "b", 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.

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.

Iowa Admin. Code r. 871-24.16(3) provides:

(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.

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.

The claimant did not earn \$448.00 in vacation pay. This was a reporting error by the claimant when she reported commission pay as vacation pay. Her commission pay would not be deductible. See Iowa Admin. Code r. 871-24.13(2)b.

The claimant did not report \$50.00 of vacation pay, and if she had, it would have been applied for the week ending March 2, 2019. Before the vacation pay would impact her benefits for the week, it must be determined whether the vacation pay was greater than  $\frac{1}{4}$  of her weekly benefit amount.  $\frac{1}{4}$  of the claimant's \$297.00 weekly benefit amount is \$74.25. Since her vacation pay was less than this amount, it will not impact the benefits she received for the week. Accordingly, the administrative law judge concludes the claimant was not overpaid \$297.00 for the week ending March 2, 2019.

**DECISION:**

The reference 03 initial decision dated March 28, 2019 is reversed. The claimant was not overpaid benefits.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn