

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAN L RUMLER**  
Claimant

**APPEAL NO. 14A-UI-10273-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AIRGAS USA LLC**  
Employer

**OC: 04/13/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(7) – Vacation Pay  
Iowa Administrative Code Rule 871-24.13(3)(b) – Paid Time Off

**STATEMENT OF THE CASE:**

Dan Rumler filed a timely appeal from the September 30, 2014, reference 02, decision that denied benefits for the two weeks ending April 26, 2014; based on an Agency conclusion that he had received vacation pay that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on October 23, 2014. Mr. Rumler participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 14A-UI-10274-JTT and 14A-UI-10275-JTT. Exhibit A and Department Exhibits D-1, D-2, and D-3 were received into evidence.

**ISSUE:**

Whether the claimant received vacation pay or the equivalent that is deductible from his unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dan Rumler was employed by Airgas USA, L.L.C. as a full-time safety specialist and last performed work for that employer on Friday, April 4, 2014. At the time Mr. Rumler involuntarily separated from the employment the employer paid Mr. Rumler five weeks wages, \$5,140.63 in "severance pay," and two weeks wages of \$2,056.26 in "pay in lieu of notice." To obtain the severance pay, Mr. Rumler had to execute a non-compete agreement with the employer and waive legal rights to file suit against the employer in connection with his separation from the employment. The two weeks of "pay in lieu of notice" represented the two weeks of Paid Time Off that Mr. Rumler had accrued, but not yet used at the time of his separation.

Mr. Rumler established a claim for benefits that was effective April 13, 2014. For the week ending April 19, 2014 Mr. Rumler reported zero wages and received \$408.00 in benefits. For the week ending April 26, 2014 Mr. Rumler reported "vacation" pay of \$999.00 or more and received no benefits. For the week ending May 3, 2014 Mr. Rumler reported zero wages and received \$408.00 in benefits. For the week ending May 10, 2014 Mr. Rumler reported "vacation" pay of \$999.00 or more and received no benefits. For the week ending May 17, 2014 Mr. Rumler reported \$850.00 in wages and received no benefits.

On April 15, 2014 Iowa Workforce Development mailed a notice of claim to the employer at the employer's address of record. The notice of claim provided April 25, 2014 as the deadline for the employer's response to the notice of claim. Workforce Development received the employer's faxed response on April 24, 2014. In the area of the notice of claim reserved for information concerning final wages, vacation pay, severance pay et cetera, the employer superimposed a box containing information regarding payments made to the claimant. The employer indicated it had paid \$1,028.13 to the claimant on April 25, 2014 for the "period ending 4/19/14." The employer indicated it had paid the claimant \$2,056.26 on May 9, 2014 "for the period ending 5/3/14." The employer indicated it had paid the claimant \$2,056.26 on May 23, 2014 "for the period ending 5/17/14." The employer indicated it had paid the claimant \$2,056.25 on June 6, 2014 "for the period ending May 31, 2014." In the remarks section of the notice of claim, the employer indicated it had paid "Two weeks of pay in lieu of notice - \$2056.26" and "Five weeks of Severance pay - \$5,140.63."

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

Iowa Code § 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.

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.

Iowa Administrative Code rule 871-24.13(3)(b) provides that Paid Time Off (PTO) is deductible from unemployment insurance benefits in the same manner that vacation pay is deductible from unemployment insurance benefits:

24.13(3) *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).

What Mr. Rumler refers to as PTO, the employer elected to call wages in lieu of notice when reporting the sum to Workforce Development. Mr. Rumler did not have to enter into any agreement or waive any rights to receive that two week \$2,056.26 sum. The employer designated the week ending April 19, 2014 as the first week to which a portion, \$1,028.13, of that amount was to be applied. The employer provided sufficient information to indicate the week ending April 26, 2014 as the second week to which the other portion, \$1,028.13, was to be applied. Because the amounts apportioned to those two weeks exceeded Mr. Rumler's \$408.00 weekly benefit amount, Mr. Rumler would not be eligible for benefits for the two week period ending April 26, 2014.

**DECISION:**

The Claims Deputy's September 30, 2014, reference 02, decision is affirmed. The claimant is not eligible for benefits for the two week period ending April 26, 2014 because he received vacation pay or the equivalent that exceeded his weekly benefit amount.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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