

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSELL W KOHMAN
Claimant

GREAT LAKES CONCRETE INC
Employer

APPEAL 20A-UI-01128-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/24/19
Claimant: Appellant (4)

Iowa Code § 96.5(5) – Other Compensation
Iowa Admin. Code r. 871-24.13(2) – Deductible and Nondeductible Payments
Iowa Admin. Code r. 871-24.18 – Wage-Earnings Limitation

STATEMENT OF THE CASE:

On February 7, 2020, the claimant filed an appeal from the February 3, 2020, (reference 04) unemployment insurance decision that deducted \$152.00 in holiday pay and wages from unemployment insurance benefits during the one week ending November 30, 2019. The parties were properly notified about the hearing. A telephone hearing was held on February 24, 2020. Claimant participated. Employer participated through bookkeeper Dawn Weuve. Claimant's Exhibit A was received. Department's Exhibit D-1 was received.

ISSUE:

Were wages and holiday pay correctly deducted from claimant's benefits during the one week ending November 30, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's first week of unemployment was the one week ending November 30, 2019. Claimant worked 8.5 hours at \$15.00 per hour. Employer paid claimant \$127.50 in wages for his work. Employer also paid claimant holiday pay for Thanksgiving, which fell on November 28, 2019. Employer paid claimant for eight hours at \$15.00 per hour, totaling \$120.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the wages and holiday pay were not correctly deducted from claimant's unemployment insurance benefits.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contributions to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Admin. Code r. 871-24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

Iowa Admin. Code r. 871-24.18 provides:

An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that

week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

In this case, the vacation and holiday pay were not correctly deducted from claimant's unemployment insurance benefits. It should have been deducted as follows:

Holiday pay and Wages \$247 – (25% of \$385 WBA = \$96) = \$151 deduction from WBA
\$385 WBA - \$151 deduction from WBA = \$234 partial weekly benefit amount

Because the administrative rules now require that wages must be rounded down to the lower multiple of one dollar, claimant was entitled to \$234.00 in unemployment insurance benefits for the one week ending November 30, 2019, instead of \$233.00 he received. Only \$151.00 should have been deducted from benefits for that week.

DECISION:

The February 3, 2020, (reference 04) unemployment insurance decision is modified in favor of appellant/claimant. The vacation and holiday pay in the amount of \$151.00 should have been deducted from benefits for the one week ending November 30, 2019.



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February 28, 2020
Decision Dated and Mailed

cal/scn