

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE A OLESON

Claimant

APPEAL NO: 08A-UI-08891-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/11/08 R: 02
Claimant: Appellant (2)**

Section 96.5-5 – Severance Pay
Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Marie A. Oleson (claimant) appealed a representative's September 30, 2008 decision (reference 02) that concluded the claimant was overpaid unemployment insurance benefits for the four-week period ending June 28, 2008 due to receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2008. This appeal was consolidated for hearing with two related appeals, 08A-UI-08890-DT and 08A-UI-08892-DT. The claimant participated in the hearing. Karie Knutson appeared on the employer's behalf. During the hearing, Exhibits A-1 and Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant overpaid unemployment insurance benefits due to the receipt of severance or vacation pay?

FINDINGS OF FACT:

The claimant started working for the employer on April 29, 1985. As of about July 9, 2007 she worked full time as director of marketing at a salary of \$39,659.00; her annualized hourly rate of pay was \$19.07. She normally worked a 40-hour week, Monday through Friday. Her last day of work was April 29, 2008.

Upon her separation on April 29 the claimant was given a check as severance pay equivalent to her pay for one month in a gross amount of \$3,304.92. This represented the pay she would have received for working the month of May. In addition, she was given a check for her vacation pay; this was in a gross amount of \$3,203.94. This represented her accrued 154.33 hours of vacation accrued through April 29, plus 13.33 hours of vacation she would have accrued in May.

The claimant established an unemployment insurance benefit year effective May 11, 2008. She filed weekly claims thereafter, but did not receive any unemployment insurance benefits for any weeks until the week ending June 7, 2008. A notice of the filing of her claim was mailed to the employer on May 16. The deadline provided on the notice for a response was May 27, 2008. On May 30 the employer responded by submitting the form indicating that the claimant had been paid \$3,203.94 in vacation pay and that the period to which the pay should be allocated was June 1 through June 29. As determined in the concurrently issued decision in appeals 08A-UI-08890-DT and 08A-UI-08892-DT, while the severance pay was properly allocated and deducted, but since the optional allocation by the employer of the vacation pay was not timely, it was not properly applied to the period after June 1, 2008.

REASONING AND CONCLUSIONS OF LAW:

If severance pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility. Iowa Code § 96.5-5(a); 871 IAC 24.13(3)c. If vacation pay was or will be received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility; the vacation pay paid or owed "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." Iowa Code § 96.5-7; 871 IAC 24.16.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. As determined in the concurrently issued decision in appeals 08A-UI-08890-DT and 08A-UI-08892-DT, claimant was eligible to receive unemployment insurance benefits as of June 1, 2008. She did not receive any unemployment insurance benefits for any period to which vacation pay or severance pay was properly applied.

DECISION:

The representative's September 30, 2008 decision (reference 02) is reversed. The claimant is not overpaid unemployment insurance benefits due to the receipt of vacation or severance pay.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs