

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J SCHELICH
Claimant

APPEAL NO. 07A-UI-07537-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON AREA FINANCE LC
Employer

OC: 06/24/07 R: 04
Claimant: Appellant (4-R)

Section 96.5-7 – Period of Vacation Pay Deduction

STATEMENT OF THE CASE:

Barbara Schelich filed an appeal from a representative's decision dated July 25, 2007, reference 01, which denied benefits for the week ending July 7, 2007, because the claimant was eligible to receive vacation pay. After due notice was issued, a telephone conference hearing was held on August 22, 2007. The claimant participated. The employer participated by Pam Kempker.

ISSUE:

At issue in this matter is whether the claimant was eligible to receive unemployment insurance benefits and whether vacation pay was deducted for the correct period.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant was separated from employment on June 26, 2007, and issued a lump sum payment for pay that was due her as well vacation pay. In its report to Iowa Workforce Development, the employer indicated that the claimant, in effect, was eligible to receive 100 hours of vacation pay at the rate of \$12.75 per hour. Based upon this information, the fact-finder disqualified the claimant from receiving benefits based upon a pro-ration of vacation hours and the claimant's hourly wage.

The amount of vacation pay to the claimant was inadvertently reported in error by the employer. Prior to the claimant's separation from employment, she had utilized 16 hours of vacation pay from the 100 hours of vacation pay that she had accrued. At the time of separation, the claimant was entitled to receive 84 hours of vacation pay, not the 100 hours of vacation pay previously reported by the company.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the amount of vacation pay that the claimant was eligible to receive at the time separation was incorrectly

reported. The record establishes that the claimant was eligible to receive 84 hours of vacation pay, 16 hours less the initially reported.

871 IAC 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.

For the reasons stated herein, the administrative law judge finds the matter should be remanded to Iowa Workforce Development for a redetermination and the issuance of an appealable decision after recomputing and the claimant's eligibility to receive unemployment insurance benefits based upon the receipt of 84 hours of vacation pay at the time of separation.

DECISION:

The representative's decision dated July 25, 2007, reference 01, is hereby remanded. The matter is remanded to Iowa Workforce Development for recomputation and the issuance of an appealable decision reflecting that the claimant has received 84 hours of vacation pay and its effect upon her eligibility to receive unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/css