

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONIQUE S REYNOLDS
Claimant

APPEAL NO. 14A-UI-00596-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 11/24/13
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 14, 2014, reference 02, that deducted vacation pay from the claimant's unemployment insurance benefits. After due notice was issued, a telephone hearing held on February 10, 2014. The claimant did participate. The employer participated through Ms. Monica Dyar, Human Resource Supervisor. Claimant's Exhibit One was received into evidence.

ISSUE:

At issue is whether the claimant received payment for unused vacation time after her separation from employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Monique Reynolds was separated from her employment with West Liberty Foods, LLC on November 27, 2013. At the time of the claimant's job separation Ms. Reynolds was not owed any vacation pay or time by West Liberty Foods. The claimant received no vacation pay and was not entitled to any vacation pay at the time of the job separation or thereafter. The employer confirms that the claimant was not paid any vacation pay and no vacation pay was due to the claimant at the time of the job separation. The employer also confirms that a clerical error was made by the employer previously indicating that Ms. Reynolds was paid vacation pay.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The evidence in the record establishes that Monique Reynolds did not receive and was not entitled to any vacation pay from West Liberty Foods, LLC when the claimant was separated

from her employment with that company on November 27, 2013. A previous report from the employer that the claimant had received vacation pay had been submitted in error. The administrative law judge concludes that the claimant was eligible to receive unemployment insurance benefits for the week ending December 7, 2013. As the claimant did not receive and was not eligible to receive vacation pay at the time of her job separation or thereafter, vacation pay should not be deducted from the claimant's unemployment insurance benefits.

DECISION:

The representative's decision dated January 14, 2014, reference 02, is reversed. The claimant did not receive deductible vacation pay for the week ending December 17, 2013. The claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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