

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER M KELLY
Claimant

APPEAL NO: 14A-UI-10264-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/27/14

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Christopher M. Kelley (claimant) appealed a representative's September 29, 2014 decision (reference 02) that concluded he was overpaid unemployment insurance benefits due to receipt of vacation pay. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on October 23, 2014. The claimant participated in the hearing. During the hearing, Exhibit A-1 was 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:

Did the claimant receive vacation pay and was it properly allocated and deducted to result in an overpayment of benefits?

FINDINGS OF FACT:

The claimant worked full time on a Monday through Friday schedule as a technician at an hourly rate of \$15.50. His last day of work was Thursday, May 1, 2014; he worked 28 hours that week, earning \$434.00. At the time he separated from the employment he had accrued, but not yet used, 40 hours of vacation pay benefits with a gross dollar value of \$620.00. This was subsequently paid out to him by direct deposit.

The claimant established an unemployment insurance benefit year effective April 27, 2014. His weekly benefit amount was established as \$439.00. He made weekly continued claims for weeks including the weeks ending May 3 and May 10; he reported the receipt of his wages for his hours worked during the week ending May 3, but did not report any vacation pay; he received a reduced benefit amount of \$114.00 for that week. He reported no wages or vacation for the week May 10, and received his full weekly benefit for that week. He did not report the vacation pay as he was unaware that the employer was going to be paying out his vacation pay.

A notice of claim was mailed to the employer on June 29, 2014; the employer responded by faxing a response to the Agency on May 8, 2014, within the May 12 deadline. On the response

the employer provided vacation pay information. The employer indicated on the form that at the time the claimant separated from the employment he had accrued, but not yet used, 40 hours of vacation pay benefits with a gross dollar value of \$620.00. The notice of claim form contained instructions as follows: "Failure to provide the time period to which the vacation pay applies shall result in the entire amount be applied to the 5 working days following the last day worked." The notice of claim form provided a space for employer remarks. The employer did not put any information into this space, and did not otherwise note on the form the period to which the reported vacation pay amount should be applied.

When the Agency received the employer's information regarding vacation pay, an Agency representative used that information to redetermine the claimant's benefit eligibility. The Agency representative applied 12 hours of pay (equaling \$186.00) to the week ending May 3, for a total of wages of vacation for the week of \$620.00, and applied the remaining 28 hours (equaling \$434.00 to the week ending May 10. Based on the apportionment of the vacation pay, the Agency representative concluded that the claimant was not eligible for unemployment insurance benefits for the weeks that ended May 3. The amount attributable to the week ending May 10 was left a remaining benefit eligibility of \$5.00 for that week. Because the claimant had previously received unemployment insurance benefits for these weeks, the Agency representative therefore concluded that the claimant had been overpaid benefits for those weeks.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.5-7-a,b,c and d provide:

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.

[Emphasis added.]

Rule 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.

[Emphasis added.]

The evidence in the record establishes that the employer made a timely response to the notice of claim. Although the employer failed to specify the period of time to which the vacation pay was to be applied, since the amount of accrued but unpaid vacation pay did not exceed 40 hours, this failure does not affect the designation of the period to which the vacation pay should be apportioned when determining the claimant's eligibility for unemployment insurance benefits. Accordingly, pursuant to the statute, the Agency representative properly apportioned the vacation pay amount to the one-week period, specifically the first 40 hours, after the

claimant's separation on May 1, 2014. The first 12 hours, \$186.00, was properly attributed to the week ending May 3, 2014. That week the claimant received wages and vacation pay which exceeded his weekly benefit amount plus \$15.00 and, therefore, he ineligible for unemployment insurance benefits for that week. The remainder of \$434.00 was properly attributed to the week ending May 10, leaving partial eligibility of \$5.00, so he was overpaid \$434.00 for that week.

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. In this case, the claimant has received benefits but was ineligible for those benefits.

The administrative law judge concludes that the claimant is overpaid benefits of \$548.00. Even though those benefits were received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's September 29, 2014 decision (reference 02) is affirmed. The vacation pay was correctly allocated and deducted. Vacation pay applied to the weeks ending May 3 and May 10, 2014. He was overpaid benefits for those weeks in the amount of \$548.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css