

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISABEL OCHOA
Claimant

APPEAL 20A-UI-02332-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD PACKAGED MEATS CORP
Employer

**OC: 12/15/19
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

STATEMENT OF THE CASE:

On March 16, 2020, the claimant filed a timely appeal from the March 4, 2020, (reference 10) unemployment insurance decision that found claimant overpaid unemployment insurance benefits in the amount of \$118.00 for the one week ending December 21, 2019, based on incorrectly reporting vacation pay. After due notice was issued, a telephone conference hearing was held on April 21, 2020. Claimant participated personally through a Spanish interpreter with CTS Language Link. Employer did not participate. Claimant's Exhibit A was received.

ISSUES:

Was vacation pay correctly deducted from claimant's unemployment insurance benefits?
Was claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 9, 2019, the claimant was separated from employment. Claimant did not work that week, as she was on medical leave. Claimant filed a claim for unemployment insurance benefits with an effective date of December 15, 2019.

Employer paid claimant \$387.60 for accumulated but unused vacation pay/paid time off (PTO). This is equivalent to 24 hours, based on a rate of pay of \$15.65 per hour, for a total of \$375.60, plus \$12.00 of pay for shift differential.

Claimant's weekly benefit amount is \$454.00. Claimant reported \$270.00 in vacation pay for the one week ending December 21, 2019. Claimant received a benefit payment in the amount of \$184.00 for the one week ending December 21, 2019.

Claimant was found overpaid \$118.00 and has repaid that amount in an offset from later issued benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid unemployment insurance benefits because she improperly reported vacation pay.

Iowa Code section 96.5(7) provides:

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

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. 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" or paragraph "b", 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, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount 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, 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 five workdays 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.

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.

Iowa Admin. Code r. 871-24.13(1) provides:

24.13(1) Procedures for deducting payments from benefits.

Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871-24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim response, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative shall determine days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871-24.18(96) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In this case, the entire amount of vacation pay was correctly deducted by Iowa Workforce Development from the first week of benefits following the separation.

\$454 WBA - \$388 deduction from WBA = \$66 partial weekly benefit amount
\$184 WBA paid - \$66 partial benefits due = \$118 overpayment for the week

As demonstrated in the calculation above, claimant was overpaid unemployment insurance benefits in the amount of \$118.00 for the one week ending December 21, 2019. Claimant has already repaid that amount and no further amount should be offset from her benefits.

DECISION:

The March 4, 2020, (reference 10) unemployment insurance decision is affirmed. The vacation pay/PTO was deducted for the correct period and claimant was overpaid unemployment insurance benefits in the amount of \$118.00. Claimant has already repaid those benefits.



Christine A. Louis
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April 24, 2020
Decision Dated and Mailed

cal/scn