

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA SCHOOLEY
Claimant

APPEAL 18A-UI-10138-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AUDUBON COUNTY MEMORIAL
HOSPITAL**
Employer

**OC: 08/13/17
Claimant: Appellant (1)**

Iowa Code § 96.5-7 – Vacation Pay
Iowa Code § 96.5(5) Severance Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 27, 2018 (reference 03) that deducted severance pay and vacation pay from her unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 23, 2018. Claimant participated. Employer participated through Kolton Hewlett, Director of Human Resources. Official notice was taken of agency records

ISSUE:

Did the claimant receive vacation pay or severance pay that was properly deducted from her unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from the employer on August 3, 2017. After her separation the claimant was paid \$742.72 for unused vacation time. She was paid at the rate of \$37.74 per hour for 19.68 hours of unused vacation time. She was also paid four weeks of severance pay in the gross amount of \$6,038.40 representing forty hours per week at the hourly rate of \$37.74.

The claimant filed a claim for benefits with an effective date of August 13, 2017. She made weekly claims for benefits for the nine week period ending October 14, 2017. At no time when filing her weekly claim for benefits did the claimant report that she had been paid vacation pay or severance pay.

A notice of claim was mailed to the employer on August 15, 2017. The employer returned the notice of claim form on August 17, 2017 indicating they were not protesting the claimant's claim for benefits. In their response the employer did not indicate that they had paid claimant any unused vacation pay or severance payments after her separation. At the time the employer was in the claimant's "lag quarter" so their account was not subject to charges for any benefits paid to claimant.

The claimant filed a new claim for benefits with an effective date of September 2, 2018. As the employer was now in the claimant's base period and their account would be subject to charges,

they were again mailed a notice of claim on September 10, 2018. The employer returned the notice of claim form on September 11, 2018 and indicated again that they were not protesting the claimant's claim for benefits. However, on this notice of protest the employer provided the detailed information about claimant's payment of vacation pay and severance pay after her separation from employment. The employer indicated that they claimant was paid vacation for August 4 and August 7, 2017. The vacation was all applied by the employer to the first week after the claimant was separated from employment.

In order to receive the severance pay, the claimant was not required to sign any type of release. She was given the wages in lieu of notice with no obligation that she waive any of her other rights.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive severance pay, and vacation pay which were both correctly deducted from her unemployment insurance benefits.

Iowa Code section 96.5(5) provides:

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

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of

benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

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. 871-24.16(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.

The vacation pay was correctly deducted as it was taken only from the week immediately following claimant's separation from employment.

The claimant received four weeks of severance pay that represented wage replacement all of which are deductible from her unemployment insurance benefits. Therefore, the entire amount of severance pay was correctly deducted for the four week period ending September 9, 2017.

Both the employer and the claimant are required to report payment of and/or receipt of vacation pay and severance pay to the agency. Without that information the agency has no way to determine whether any deduction from benefits must be made. Both the claimant and the employer failed to report the vacation pay and the severance pay to the agency when the claimant filed her initial claim in August 2017. It was not until September 2018 that the agency first learned that the claimant had been paid both vacation pay and severance pay. When the agency learned of the new information they took action to address whether the vacation pay and severance pay had been accounted for correctly.

IAC R. 871-24.19(3) provides:

Upon receiving a written request for review or, **on its own initiative** and on the basis of the facts as it may have in its possession or **may acquire**, the claims section may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

The rules does not require the agency establish any good cause reason for issuing a new decision nor does it limit the amount of time in which the agency has to issue the new decision. The rule set out above indicates that the agency did have the authority to issue the decision deducting severance pay and vacation pay from the claimant's unemployment insurance benefits as they acquired new information and on their own initiative chose to act on it. Thus, despite the fact that neither claimant nor the employer had provided the information to the agency at the time of the initial claim and separation, the agency was allowed to issue the decision of September 27, 2018.

DECISION:

The September 27, 2018, (reference 03), decision is affirmed. The severance pay and vacation pay were both deducted for the correct periods.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs