

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA L LAABS

Claimant

APPEAL NO. 08A-UI-10456-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WATERLOO IMPLEMENT INC

Employer

**OC: 09/14/08 R: 03
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Donna L. Laabs (claimant) appealed a representative's November 4, 2008 decision (reference 01) that concluded she was not eligible to receive benefits for the week ending September 20, 2008, because she received vacation pay from Waterloo Implement, Inc. (employer) that was attributed to this week. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 24, 2008. The claimant participated in the hearing. The employer contacted the Appeals Section prior to the scheduled hearing and left a message that the employer did not plan to participate in the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the claimant's PTO payment be considered a vacation payment and deducted from her maximum weekly benefit amount?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of September 16. The claimant's last day of work was August 18, 2008. The employer paid the claimant a severance payment of \$2,080.00 and designated the period it covered as August 19 through September 15, 2008. The Department attributed \$104.00 of the severance to September 15, 2008.

The employer reported the claimant received 40.75 hours of vacation pay or a gross payment of \$529.75. The claimant's paycheck and the employer's policy, however, indicate the employer pays PTO, not sick time or vacation time. (Claimant Exhibit A.) When the claimant talked to her local Workforce representative and showed her payroll stub to the representative indicating the amount of PTO pay she received, the claimant learned the PTO payment was not considered a vacation payment and should not be deducted from her maximum weekly benefit.

The employer's PTO time consists of both vacation and unused sick leave hours. The employer's policy does not assign a value or a percentage to distinguish between vacation or sick leave hours. The employer's policy incorporates vacation and sick together and considers any accumulation of hours as PTO time. When the employer pays out PTO time, the employee's check indicates PTO time paid out, not vacation or sick leave pay. (Claimant Exhibit A.)

REASONING AND CONCLUSIONS OF LAW:

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the specific dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be applied to the first five working days after the claimant's last day of work. Iowa Code § 96.5-7. However, the law specifically states that payment for unused sick leave is **NOT** considered wages for unemployment insurance purposes, which means it is not deductible from benefits. 871 IAC 24.13(4) d. (Emphasis supplied.)

Since the employer's PTO time is a hybrid or mixture of vacation and unused sick leave time, and no breakdown of the percentage of vacation and unused sick leave time has been attributed to the total PTO time, there is no way to divide the vacation pay from the unused sick leave pay. Under this factual situation, the PTO pay the claimant received, \$529.75, cannot be deducted from her weekly benefits. This means the claimant is eligible to receive benefits for the week ending September 20, 2008, if she meets all other eligibility requirements.

DECISION:

The representative's November 4, 2008 decision (reference 01) is reversed. Since the employer's PTO pay is a combination of both vacation and unused sick leave time and there is no way of apportioning the pay between the two, the PTO pay the claimant received, \$529.75, cannot be deducted from her benefits. Therefore, the claimant is eligible to receive benefits for the week ending September 20, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw