

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY L BORTON**  
Claimant

**APPEAL NO. 09A-UI-11573-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARSHALLTOWN COMPANY**  
Employer

**OC: 03/15/09**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 11, 2009, reference 02, decision that deducted vacation pay from benefits without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a telephone conference hearing was held on August 27, 2009. Claimant participated. Employer participated through Human Resources Administrator Sara Aguilera.

**ISSUE:**

The issue is whether claimant received vacation pay and if so, whether it was correctly deducted from benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on March 6, 2009, and received “severance” pay but was required to sign a separation agreement waiving certain rights to get that payment. Severance pay is generally defined as money paid to an employee who is dismissed because of a lack of work or other reasons beyond the employee's control but does not require anything further in exchange. Her vacation pay was issued in a lump sum for the week ending March 14, 2009, the first week following the separation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the vacation pay was not deducted for the correct period.

Iowa Code § 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.

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.

The general policy underlying the deductibility of “vacation pay” from benefit eligibility is “that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor.” *Lefebure Corp. v. Iowa Dept. of Job Service*, 341 N.W.2d 768, 771 (Iowa 1983); *see also*, 14 A.L.R.4th 1175 §2(a) (1982). Thus, “vacation pay” is deductible because it is considered a form of “wage,” which the statute further defines as any “remuneration for personal services . . .” Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer. The law allows employers to designate the period of time to which a lump sum payment is allocated so that claimants have to exhaust their wage substitute payments before drawing benefits. Because the employer did not designate a time period to which the vacation pay is to apply, the entire amount was not correctly deducted from the week ending July 4, 2009. Since claimant waited a week after the March 6, 2009 separation before filing her claim, the vacation pay should have been attributed to the week ending March 14, 2009, which would not affect her benefit as the effective date of her claim was March 15, 2009.

#### **DECISION:**

The August 11, 2009, reference 02, decision is reversed. The vacation pay was incorrectly attributed to the week ending July 4, 2009 and should have been applied immediately following the separation to the week ending March 14, which was prior to the March 15, 2009 effective claim date. Benefits are allowed effective March 15, 2009.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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