

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN DUBBERKE**  
Claimant

**APPEAL NO. 10A-UI-06275-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**Original Claim: 05/10/09  
Claimant: Appellant (2)**

Iowa Code § 96.5-7 - Receipt of Vacation Pay

**STATEMENT OF THE CASE:**

Susan Dubberke (claimant) appealed an unemployment insurance decision dated April 20, 2010, reference 02, which held that she was not eligible for unemployment insurance benefits for the six-week period ending June 20, 2010 due to the receipt of vacation pay from Lutheran Services in Iowa, Inc. (employer). Due notice was issued scheduling the matter for a telephone hearing to be held June 14, 2010. Because there is no dispute of material facts, a hearing was deemed unnecessary. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the vacation pay was properly deducted.

**FINDINGS OF FACT:**

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: After the claimant's separation from employment, she received payment in the amount of \$4,025.98 for paid time off (PTO). The employer's PTO includes vacation, holiday, and sick leave, and there is no delineation as to the sick leave.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the vacation pay was properly deducted. 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.

When an employer makes a payment to a person for vacation pay, or as pay in lieu of vacation, the pay is deemed wages and is deductible from unemployment insurance benefits. See

<http://www.iowaworkforce.org/ui/appeals/index.html>

Iowa Code § 96.5(7)(a). 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.

In the case herein, the claimant received payment for PTO. The evidence establishes the employer's PTO time is a hybrid or mixture of vacation, holiday, and unused sick leave time. However, there is no breakdown of the percentage of vacation and unused sick leave time that has been attributed to the PTO time. Therefore, 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 cannot be deducted from her weekly benefit amount. This means the claimant is eligible to receive benefits as of May 16, 2009, and no deduction shall be made for the PTO pay she received.

**DECISION:**

The unemployment insurance decision dated April 20, 2010, reference 02, is reversed. Vacation pay was not deducted correctly. The claimant is eligible to receive benefits as of May 9, 2009, and no deduction shall be made for the PTO pay she received.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/kjw