

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA L DAWSON**  
Claimant

**APPEAL NO. 14A-UI-02257-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA DONOR NETWORK**  
Employer

**OC: 01/12/14**  
**Claimant: Appellant (4)**

Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal to the representative's decision dated February 13, 2014, reference 02, that concluded claimant was ineligible for unemployment insurance benefits for the five weeks ending February 15, 2014 because she was receiving or entitled to receive vacation pay which equaled or exceeded her benefit amount. After due notice was provided, a telephone hearing was held on March 20, 2014. Claimant participated. The employer participated by Ms. Lindsey Jones, Human Resource Manager. Claimant's Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the vacation pay was deducted for the correct period and the amount from unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant's employment with Iowa Donor Network ended on January 10, 2014 when the claimant was separated by the employer. The claimant received a final check in the amount of \$8,504.84 with a net amount of \$5,304.25. Of that amount, \$339.06, \$3,927.49 and \$234.38 were included as a combination of PTO payout, vacation and holiday pay. The Iowa Donor Network responded to the notice of claim provided by Iowa Workforce Development indicating that the claimant had received vacation pay listing 175 hours and the gross amount paid to be \$4,944.68. The employer mistakenly reported those hours as vacation pay although they reflected a combination of PTO, holiday and vacation time combined. Although the employer did designate on the notice of claim 175 hours, the intent of the employer was to have all of the combined hours of PTO, holiday and vacation to be applied to Ms. Dawson's first week of employment. It appears that the absence of a beginning and end spaces for the allocation of the vacation payout on the notice of claim form may have caused the employer's response to appear that the employer's intention was to allocate the payout to a period of time rather than a total amount. The number indicated by the employer also included time that had already been utilized by Ms. Dawson prior to her separation from employment.

The pay received by Ms. Dawson was not vacation pay but a hybrid of vacation and sick leave. The claimant had a right to use some of the pay for either vacation, sick time or any other use. The method of allocation does not make it possible to clearly allocate the vacation pay portion, as the company designates vacation pay from sick pay, holiday time portions of the accrued number of hours.

### **REASONING AND CONCLUSIONS OF LAW:**

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

If vacation pay was or will be received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefits eligibility; the vacation pay paid or owed: "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." Iowa Code section 96.5-7. If the vacation time would normally cover more than one week and the employer wishes to have the vacation pay distributed evenly throughout the period to which the vacation pay could be allocated, the employer must make a timely report to the agency of the applicable time period. 871 IAC 24.16(3).

Iowa Code section 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.

871 IAC 24.16(3) provides:

The law specifically states that payment for unused sick leave is not considered wages for unemployment insurance purposes; as such it is not deductible from unemployment insurance benefits. 871 IAC 24.13(4)d.

The evidence establishes that the claimant's vacation time is a hybrid or mixture of vacation, sick and floating holiday leave pay. Due to differences in terminology in the application of the pay there is no exact way to divide the unused portion of the pay that is truly "vacation pay" from the unused portions that are related to sick pay and for the holiday pay. The evidence in the record does, however, establish that the unused portion of the pay provided for or be considered to be "vacation pay" under the provisions of the Employment Security Law did equal or exceed the claimant's weekly benefit amount for the first five working days following the claimant's last day of employment.

The agency rule addressing “excused personal leave” is Iowa Administrative Code 871 IAC 24.13(3)(b) and it provides as follows:

Further deductible payments from benefits. The following payments are considered as wages: however, such payments are fully deductible from benefits on a dollar for dollar basis:

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be fully deductible only when taken in conjunction with a scheduled period of vacation in which case it shall be treated as vacation and shall be fully deductible in the manner prescribed in rule 24.16(96).

Paid Time Off (PTO) is equivalent to “excused personal leave,” essentially paid time that an employee accrues and can be used for sick leave, vacation leave or other personal time off. Therefore, under this rule, PTO is only treated as vacation pay if the time off is taken during employment. Here also PTO is not treated as vacation pay if it is paid out in conjunction with the separation from employment, and therefore, is not deductible from the claimant’s unemployment insurance benefit eligibility. The employer erroneously reported a number of the claimant’s PTO time as vacation pay in the employer’s response to the late notice of claim.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge holds that the employer’s intention was to have all of the combination of vacation PTO, personal time off, and sick attributed to the claimant’s first five working days following her last day of work for Iowa Donor Network. This conclusion is based upon the employer representative’s sworn testimony in this matter. The administrative law judge further concludes based upon the testimony of the parties that the amount of the combination payment that the claimant received at the time of separation did include 103 hours of what is categorized as “vacation pay” under the provisions of the Employment Security Law and the Administrative Code and, therefore, the claimant received “vacation pay” that equaled or exceeded her weekly benefit amount for the first five working days following her last day of employment. The adjudicator’s determination, therefore, is affirmed as modified.

**DECISION:**

The February 13, 2014, reference 02, decision is affirmed as modified. The combination PTO sick leave and holiday pay was not deductible as vacation pay. Claimant received “vacation pay” for 103 hours at the time of separation that the employer intended to be applied to the first five working days after the claimant’s date of separation. The claimant is eligible to receive unemployment insurance benefits beginning with the week ending date of January 25, 2014, providing that she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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