

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANNE BRABAND

Claimant

APPEAL NO. 09A-UI-07965-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENERAL CASUALTY CO OF WISCONSIN

Employer

Original Claim: 01/25/09

Claimant: Appellant (1)

Iowa Code section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Roxanne Braband filed a timely appeal from the May 20, 2009, reference 02, decision that denied benefits for the week ending February 7, 2009 based on a conclusion that Ms. Braband had received vacation pay deductible from that week. After due notice was issued, a hearing was held on June 18, 2009. Ms. Braband participated. Sheila Luken, Vice President and Corporate Counsel, represented the employer. Exhibits A and B and Department Exhibits D-1, D-2, and D-3 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of unemployment insurance benefits paid to the claimant and wages reported by the claimant. The hearing in this matter was consolidated with the hearing in Appeal Numbers 09A-UI-07964-JTT and 09A-UI-07966-JTT.

ISSUES:

Whether the claimant received vacation pay that is deductible from her unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roxanne Braband was employed by General Casualty Company of Wisconsin as a full-time Unit Claim Manager from May 2005 until January 30, 2009, when the employer laid her off. Ms. Braband last performed work for the employer on Friday, January 30, 2009. At the time Ms. Braband separated from the employment, she had accrued, but not yet used, vacation pay benefits totaling \$1,157.16. The employer paid Ms. Braband for these benefits by direct deposit on February 6, 2009.

In connection with Ms. Braband's separation from the employment, the employer and Ms. Braband executed a Severance Agreement and Release. There were many provisions included in the agreement. Under the agreement, Ms. Braband would receive a lump sum payment of \$11,100.00 subject to applicable taxes. Under the agreement, Ms. Braband waived the right to pursue legal action and released the employer from liability in connection with any claim other than workers' compensation and unemployment insurance. The document contained additional provisions that included an obligation to return the employer's property and to keep the employer's confidences. Had Ms. Braband not agreed to the waiver/release and the additional provisions, the employer would not have agreed to disburse the \$11,100.00 lump sum payment. The employer paid Ms. Braband the amount referenced in the agreement by direct deposit on February 13, 2009.

Ms. Braband established a claim for unemployment insurance benefits that was deemed effective January 25, 2009, the Sunday of the week in which Ms. Braband applied for benefits. Ms. Braband's weekly benefit amount was set at \$361.00. For the week ending January 31, 2009, Ms. Braband reported wages equal to or greater than \$999.00 and received no benefits. For the week ending February 7, 2009, Ms. Braband reported \$77.00 in wages and received \$361.00 in unemployment insurance benefits. The reported wages were from a part-time job. For the week ending February 14, 2009, Ms. Braband reported vacation pay that equaled or exceeded \$999.00 and received no benefits. For the week ending February 21, 2009, Ms. Braband reported \$453.00 in wages and received no benefits. The reported wages were from a part-time job. Ms. Braband continued to claim benefits through the week that ended March 28, 2009 and reported no additional wages; Ms. Braband received no benefits for these weeks.

On February 3, 2009, Workforce Development mailed a Notice of Claim concerning Ms. Braband to the employer. The Notice of Claim set forth a February 13, 2009 deadline for the employer's response. On February 5, 2009, an employer representative completed information on the Notice of Claim form. The employer did not protest the claim. The employer provided information concerning benefits paid to Ms. Braband in connection with the separation. The employer included the \$1,157.16 vacation pay amount. In the space provided for the employer to designate the period to which the vacation pay should be applied when redetermining Ms. Braband's eligibility for unemployment insurance benefits, the employer merely indicated that the vacation pay was paid on February 6, 2009. The employer referenced an \$11,100.00 severance amount, but indicated that Ms. Braband had not yet "signed" and the amount had not yet been paid. The employer indicated that amount equated to seven weeks' pay. The employer did not indicate the period to which the amount should be applied when redetermining Ms. Braband's eligibility for unemployment insurance benefits. Workforce Development received the employer's faxed response on February 9, 2009.

A Workforce Development representative redetermined Ms. Braband's eligibility for unemployment insurance benefits in light of the information provided by the employer. The representative applied the entire vacation pay amount, \$1,157.15, to the five working days in the week that ended February 7, 2009. Because this amount exceeded Ms. Braband's weekly benefit amount, the representative concluded that Ms. Braband was not eligible for benefits for the week and that the \$361.00 in unemployment insurance benefits disbursed for that week constituted an overpayment. The representative equally apportioned the severance pay amount over the seven-week period of February 8, 2009 through March 28, 2009. For each of these weeks, the representative apportioned \$1,585.70. Because the apportioned amount exceeded Ms. Braband's weekly unemployment insurance benefit amount for each week, the representative concluded that Ms. Braband was not eligible for benefits for any of the seven weeks.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence in the record establishes that the employer made a timely and accurate report of the amount of vacation and when it was paid, but did not designate the period to which the vacation pay benefit should be applied when redetermining Ms. Braband's eligibility for unemployment insurance benefits. In the absence of such information from the employer, the Workforce Development representative followed the requirements of the statute by applying the entire vacation pay amount to the five working days that immediately followed the last day Ms. Braband performed work for the employer. Since the last day worked was Friday, January 30, 2009, the immediately following five working days were Monday through Friday, February 2-6, 2009. Because the correctly apportioned vacation pay amount exceeded Ms. Braband's weekly benefit amount, the representative correctly concluded that Ms. Braband was not eligible for unemployment insurance benefits for the week that ended February 7, 2009.

DECISION:

The Agency representative's May 20, 2009, reference 02, decision is affirmed. The claimant received vacation pay that was deductible from her unemployment insurance benefits for the week ending February 7, 2009. The vacation pay benefit exceeded the weekly unemployment insurance benefit amount for that week. The claimant was not eligible for unemployment insurance benefits for the week that ended February 7, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw