

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONITA M SNOOK**  
Claimant

**APPEAL NO. 11A-UI-13657-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**URBANDALE COMMUNITY  
ACTION COUNCIL  
UCAN**  
Employer

**OC: 06/26/11**  
**Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant appealed a representative's decision dated September 7, 2011, reference 05, that concluded claimant was ineligible for the one week ending July 9, 2011 for unemployment insurance benefits in the amount of \$404.00. A telephone hearing was scheduled for and held on November 10, 2011, pursuant to due notice. Claimant did participate. Employer participated by Bruce Bernard, President UCAN Board. Exhibits One and A were received into evidence.

**ISSUES:**

Whether vacation pay was deducted for the correct period and amount from unemployment insurance benefits.

Whether the appeal is timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with employer was separated on July 1, 2011 and claimant received Paid Time Off pay in the amount of \$545.00, based upon a rate of pay at \$47,209.00 per year. Employer did designate the period of time to which the PTO pay was to be applied ending August 3, 2011.

The pay received was not vacation pay but a hybrid of vacation and sick leave. Claimant had the right to use the pay for either vacation, sick leave, or anything else.

Claimant did not receive the adverse decision dated September 7, 2011. Claimant appealed adverse decisions of October 5, 2011. Claimant only became aware of the prior adverse decisions in October of 2011. Claimant has trouble getting all of her mail.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal was timely, as it was filed on the first day of actual notice. Since claimant did not receive the decision in the mail, she cannot be held to the deadline for appeal.

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.

While employer did designate a time period to which the PTO pay is to apply, the entire amount was not correctly deducted from the one week of benefits following the separation, because it is PTO and not vacation pay. It is not vacation pay as defined by the statute, as it is used for both sick leave and vacation. No deduction shall be allowed. See 871 IAC 24.13(3)b.

**DECISION:**

The September 7, 2011, reference 05, decision is reversed. The vacation pay was not deducted for the correct period. PTO pay is not deductible, as it includes payment for sick leave. No deduction is allowed. No vacation pay is deductible for the week ending July 9, 2011. Claimant's appeal is timely.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw