

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE K ELSBERRY**  
Claimant

**APPEAL NO. 17A-UI-03894-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SDH EDUCATION WEST LLC**  
Employer

**OC: 07/24/16**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Julie Elsberry filed a timely appeal from the April 3, 2017, reference 02, decision that disqualified her for benefits for the week that included March 10, 2017, based on the claims deputy's conclusion that Ms. Elsberry received vacation pay for that week. An appeal hearing has been set for May 3, 2017 and the parties have been appropriately notified. The appeal hearing in this matter was to be consolidated with the hearing in Appeal Number 17A-UI-03895-JTT. Ms. Elsberry has asked that the hearing be rescheduled to later in the day. Upon review of the administrative file, the administrative law judge concludes that a hearing is unnecessary and that a decision may be entered based on the relevant content of the administrative file. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant, the dates during which the claim was active and the employer's protest materials.

**ISSUE:**

Whether Ms. Elsberry is disqualified for benefits for the week that included March 10, 2017, based on receipt of vacation pay.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Julie Elsberry is employed by SDH Education West, L.L.C. as a full-time food service supervisor. The employer temporarily laid off Ms. Elsberry for the week of March 5-11, 2017. Prior to the layoff, Ms. Elsberry last performed work for the employer on March 4, 2017. Ms. Elsberry established an "additional claim" for benefits that was effective March 5, 2017 and received \$267.00 in benefits for the week that ended March 11, 2017. Ms. Elsberry returned to work on March 14, 2017 and discontinued her claim. Ms. Elsberry did not have an active claim for benefits during the week that ended March 4, 2017.

On March 8, 2017, Iowa Workforce Development transmitted an electronic notice of claim to the employer in reference to the March 5, 2017 additional claim. The notice of claim set forth March 20, 2017 as the deadline for the employer's response to the notice of claim. The employer filed its response on March 20, 2017, as indicated by the electronic broker date-stamp

on the electronically filed protest. In the response, the employer indicated that the employer had paid Ms. Elsberry \$56.40 in holiday pay, \$225.60 in vacation pay, and \$15.04 in sick pay, all for the week that ended March 4, 2017. That was the week during which Ms. Elsberry did not have an active claim for unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The employer filed a timely protest and designated the benefit week that ended March 4, 2017 as the week to which the above mentioned holiday pay, vacation pay and sick pay should be apportioned. The employer's timely designation of the period controls and the claims deputy was without legal authority to apportion the vacation pay inconsistent with the timely designation provided by the employer. The claimant received vacation pay for the week that ended March 4, 2017, when she did not have an active claim for benefits. Her receipt of the vacation pay has no impact on the additional claim for benefits that was effective March 5, 2017. The vacation pay is not deductible from the \$267.00 in unemployment insurance benefits that the claimant received for the benefit week that ended March 11, 2017. The claimant was eligible for the unemployment insurance benefits she received for the week that ended March 11, 2017, provided she meets all other eligibility requirements.

**DECISION:**

The April 3, 2017, reference 02, decision is reversed. The employer made a timely designation of the period to which the claimant's vacation pay should be apportioned and designated that period as the benefit week that ended March 4, 2017. The claimant did not receive vacation pay that was deductible from her unemployment insurance benefits for the week that ended March 11, 2017. The claimant was eligible for the unemployment insurance benefits she received for the week that ended March 11, 2017, provided she met all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs