

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RON L DUCKERT
Claimant

GCC ALLIANCE CONCRETE INC
Employer

APPEAL 17A-UI-00592-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/16
Claimant: Appellant (2)

Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 12, 2017, (reference 01) unemployment insurance decision that deducted vacation pay/PTO from benefits. After due notice was issued, a telephone conference hearing was held on February 7, 2017. Claimant participated. Employer did not participate. Official notice was taken of the administrative record of claimant's benefit payment history and fact-finding documents, with no objection.

ISSUES:

Did the claimant receive vacation pay or PTO at separation?

Is that amount deductible from benefits, and if so, for what period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is not separated from the employer, but most employees, including claimant, are on a seasonal layoff until the Spring 2017. Claimant is on a seasonal layoff, but he has worked occasional hours for the employer since the seasonal layoff went into effect.

Claimant received holiday pay for November 23 and 24, 2016. Claimant also received four hours of PTO for November 23, 2016. The PTO and holiday pay were during the pay period November 20, 2016 through December 3, 2016, but the check was issued on December 9, 2016.

Claimant is paid by the employer every two weeks. Claimant's last day of work prior to the start of the seasonal layoff was December 3, 2016. Claimant worked a full-week after he received the holiday and PTO pay for November 23, 24, and 25, 2016. After December 3, 2016, claimant did not receive any PTO or holiday pay. For the pay period December 4, 2016 through December 17, 2016, claimant worked enough hours to earn a gross \$40.76. Claimant did not receive a payout at the time of the seasonal layoff for any unused vacation/PTO time. Claimant does report to work for the employer during the seasonal layoff if there is work available for him.

Claimant's weekly benefit amount (WBA) is \$431.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not receive any vacation pay or PTO at separation.

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 general policy underlying the deductibility of vacation pay/PTO from benefit eligibility is "that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor." *Lefebure Corp. v. Iowa Dep't of Job Serv.*, 341 N.W.2d 768, 771 (Iowa 1983); see also, 14 A.L.R.4th 1175 §2(a) (1982). Thus, "vacation pay" is deductible because it is considered a form of "wage," which the statute further defines as any "remuneration for personal services . . ." Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer.

Claimant did receive PTO and holiday pay for November 23, 24, and 25, 2016, which occurred prior to the employer starting its seasonal layoff. Claimant continued to work another week after November 25, 2016. After claimant was placed on a seasonal layoff, he did not receive any compensation from the employer for any unused PTO. Claimant also did not receive any pay for holidays after the seasonal layoff started. Because claimant did not receive any compensation for unused PTO at or after the start of the seasonal layoff, nothing should have been deducted as received vacation pay/PTO for the week ending December 10, 2016.

DECISION:

The January 12, 2017, (reference 01) unemployment insurance decision is reversed. Claimant did not receive vacation pay/PTO at or after the start of the seasonal layoff and the vacation pay/PTO was not deducted for the correct period.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs