

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREGORY HALVERSON**

Claimant

**APPEAL NO. 11A-UI-08864-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS**

**CHAMBER OF COMMERCE**

Employer

**OC: 06/05/11**

**Claimant: Respondent (4)**

Section 96.5-7 – Vacation Pay  
871 IAC 24.13(3)b – Excused Personal Leave  
Section 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

The employer appealed a representative's decision dated June 30, 2011, reference 01, that held claimant was not eligible to receive benefits for the two weeks ending June 18, 2011, due to receiving vacation pay. A hearing was held on July 27, 2011. The claimant participated. Bob Mundt, president/CEO, participated for the employer.

**ISSUE:**

The issue is whether the claimant received vacation and/or severance pay.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer on May 27, 2011. The claimant was a salaried employee and he earned \$86,700 annually, or \$3,334.62 bi-weekly. He filed his unemployment claim effective June 5, 2011, and his weekly benefit amount (WBA) is \$461.00.

The employer protested the notice of claim by reporting 15 days (or 3 weeks) of vacation pay paid to claimant in the amount of \$5,336 to apply from a period from May 30 to June 20, 2011. The employer grants employees P.T.O. (paid time off), which includes vacation, personal illness, and family issues. The employer filed a further protest by reporting 20 days (or 4 weeks) of severance pay paid to claimant in the amount of \$6,336 to apply from June 21 to July 15, 2011.

**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 administrative law judge concludes claimant is not disqualified from receiving benefits due to receiving P.T.O pay, because it does not meet the department definition of vacation pay pursuant to department rule 871 IAC 24.13(3)b. There is no employer requirement that PTO for personal illness or family issues must be used in conjunction with an approved scheduled vacation period.

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

The administrative law judge further concludes the claimant is disqualified from receiving benefits for the four weeks ending July 2, 2011, due to receiving severance pay.

The employer properly protested the claimant's severance for a four-week period, which is a weekly amount of \$1,584 (\$6,336 divided by 4 weeks). The weekly severance pay exceeds claimant's WBA (\$461.00), which disqualifies him from receiving any unemployment benefit for these weeks.

**DECISION:**

The representative's decision dated June 30, 2011, reference 01, is modified in favor of the employer. The claimant is not disqualified from receiving benefits for PTO pay, but he is for a four-week period ending July 2, 2011 due to receiving severance pay.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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