

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KALVIN J TINSTMAN
Claimant

NCS PEARSON INC
Employer

APPEAL 19A-UI-07373-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/11/19
Claimant: Appellant (4)

Iowa Code § 96.5(5) – Payment – Other Compensation
Iowa Admin. Code r. 871-24.18 – Wage-Earnings Limitation

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the September 12, 2019 (reference 02) unemployment insurance decision that found claimant not eligible for benefits for the two weeks ending August 24, 2019. The parties were properly notified of the hearing. A telephone hearing was held on October 9, 2019, at 9:00 a.m. Claimant participated. Employer did not participate. Claimant's Exhibits A – C were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether severance pay was correctly deducted.
Whether vacation pay was correctly deducted.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked 16 hours at a rate of \$14.50 per hour for the week ending August 17, 2019. The reduction in hours was due to a lack of work. Claimant worked 34 hours at a rate of \$14.50 per hour for the week ending August 24, 2019. Claimant filed an unemployment insurance benefit claim with an effective date of August 11, 2019. Claimant received no other compensation for the two weeks ending August 24, 2019. Claimant received unemployment insurance benefits in the amount of \$201.00 for the benefit week ending August 17, 2019 and received none for the benefit week ending August 24, 2019. Claimant's weekly benefit amount (WBA) is \$347.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's wages were correctly deducted from claimant's unemployment insurance benefits.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

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

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

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

(3) 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, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. 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", subparagraph (1), (2), or (3), 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.

Iowa Admin. Code r. 871-24.18 provides:

An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

In accordance with Iowa Administrative Code rule 871-24.18, the wages are deductible from claimant's weekly benefit amount, for the week ending August 17, 2019, as follows:

\$232.00 (wages) - \$86.74 (25% of WBA) = \$145.26 (wage deduction)
\$347.00 (WBA) - \$145.26 (wage deduction) = \$201.74 (partial weekly benefit amount)

Claimant is eligible for a reduced weekly unemployment insurance benefit in the amount of \$201.00 for the week ending August 17, 2019, provided he is otherwise eligible.

Claimant's wages for the week ending August 24, 2019 were in excess of claimant's weekly benefit amount plus \$15.00; therefore, claimant is disqualified due to excessive earnings for the week ending August 24, 2019.

DECISION:

The September 12, 2019 (reference 02) unemployment insurance decision is modified. Claimant is eligible for benefits in the amount of \$201.00 for benefit week ending August 17, 2019. Claimant is not eligible for benefits for benefit week ending August 24, 2019.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs