

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAWNTASHIA L HOWELL**  
Claimant

**OPEN ARMS HOME HEALTH CARE**  
Employer

**APPEAL 19A-UI-03242-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/24/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(5) – Wages Earned  
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

**STATEMENT OF THE CASE:**

On April 18, 2019, Dawntashia L. Howell (claimant) filed a timely appeal from the April 15, 2019, reference 04, unemployment insurance decision that deducted wages earned with Open Arms Home Health Care (employer) and vacation pay/PTO from benefits. After due notice was issued, a telephone conference hearing was held on May 8, 2019 and was consolidated with the hearing for appeal 19A-UI-03241-SC-T. The claimant participated personally. The employer participated through Clinical Manager Christy Hindle, Corporate Administrator Dianne McClenahan, HR Administrator Kathie Pierce, and RN Administrator Jane Jones. The Employer's Exhibit 1 was admitted into the record without objection.

**ISSUES:**

Did the claimant earn wages while claiming unemployment insurance benefits?  
Did the claimant receive vacation pay or PTO at separation?  
Are those amounts 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: The claimant filed her claim for benefits effective March 24, 2019 and her weekly benefit amount is \$255.00. The claimant's last day of work was March 26. The claimant earned gross wages in the amount of \$199.00 during her final week of employment for working 14.2 hours at a pay rate of \$14.00 an hour. The employer also paid out her accumulated but unused vacation pay/paid time off (PTO) in the amount of \$299.00, equivalent to 21.35 hours.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the wages and vacation pay/PTO were deducted for the correct period. Benefits are denied for the week ending March 30, 2019.

Iowa Code section 96.5 provides, in relevant part:

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.

...

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. 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, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount 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, 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 five workdays 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.

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.

The claimant received wages and vacation pay of \$498.00 equivalent to approximately 35 hours during the week ending March 30, 2019. These hours do not exceed the normal workdays the claimant would have worked that week. The wages exceed the claimant’s weekly benefit amount plus fifteen dollars and she is not entitled to unemployment insurance benefits for that week. Benefits are denied for the week ending March 30, 2019.

**DECISION:**

The April 15, 2019, reference 04, unemployment insurance decision is affirmed. The wages earned and vacation pay/PTO were deducted for the correct period. Benefits are denied for the week ending March 30, 2019.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn