

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA K WILSON**  
Claimant

**APPEAL NO. 09A-UI-14539-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVENTURE LANDS OF AMERICA INC**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant (1-R)**

Iowa Code Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Sandra Wilson filed a timely appeal from the September 23, 2009, reference 02, decision that denied benefits for the week ending April 18, 2009 based on an Agency conclusion that she had received vacation pay deductible from that week's benefits. After due notice was issued, a hearing was held on October 26, 2009. Ms. Wilson participated. Joseph Formaro, Assistant General Manager, represented the employer and presented additional testimony through Patty Morse, Payroll Clerk. Department Exhibits D-1 through D-4 were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-14540-JTT.

**ISSUE:**

Whether the claimant received vacation pay that is deductible from her unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sandra Wilson was employed by Adventure Lands of America, Inc., as a full-time housekeeper supervisor until April 9, 2009. Ms. Wilson's final wage was \$7.50 per hour. At the time Ms. Wilson separated from the employment, she had accrued 40 hours of vacation pay that she had not yet used. The gross value of the vacation pay was \$300.00. The employer disbursed the net vacation pay to Ms. Wilson through a paycheck issued on April 24, 2009. The paycheck also included Ms. Wilson's regular wages for April 6-8 for the 19.5 hours she had worked during that period. The gross value of the 19.5 hours of wages was \$146.25.

Ms. Wilson established a claim for unemployment insurance benefits that was effective April 5, 2009. Ms. Wilson's weekly benefit amount was determined to be \$149.00. For each week that

Ms. Wilson was eligible for regular unemployment insurance benefits, she was deemed eligible for \$25.00 in federal stimulus benefits. Ms. Wilson received benefits. For the week ending April 11, Ms. Wilson reported \$225.00 in vacation pay and received no unemployment insurance benefits. For the week ending April 18, Ms. Wilson reported no wages and received \$149.00 in regular benefits and an additional \$25.00 in federal stimulus benefits. For the week ending April 25, 2009, Ms. Wilson reported \$300.00 in wages and received no benefits. For the week ending May 2, Ms. Wilson reported \$45.00 in wages and received \$141.00 in regular benefits and an additional \$25.00 in federal stimulus benefits.

On April 13, 2009, Workforce Development had mailed a notice of claim concerning Ms. Wilson to the employer's address of record. The notice of claim contained an April 23, 2009 deadline for the filing of the employer's response. At numbered paragraph 10, the notice of claim solicited information from the employer concerning any vacation pay disbursed to Ms. Wilson in connection with the separation from the employment. The notice of claim directed the employer to provide the amount of the vacation pay and the start date and the end date of the period to which the employer wished the vacation to be applied. The employer provided an amount, \$300.00. The employer did not provide the start date and end date of the period to which the vacation pay should be applied. The employer indicated that payment would issue on April 24, 2009.

Because the employer did not designate the period to which the vacation pay should be applied, a Workforce Development representative divided the total amount of vacation pay in to five equal amounts (\$60.00). The representative then apportioned one day's worth of vacation pay to the week ending April 11 and apportioned the remaining portion (\$240.00) to the week ending April 18.

## **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 employer provided timely information concerning the gross amount of the vacation pay. The employer did not specify the start date and end date of the period to which the vacation pay should be applied. Under the circumstances, the Workforce Development correctly followed that law by dividing the vacation pay reported by the employer into five equal portions and by applying the vacation pay to the first five working days that followed the claimant's last day in the employment, which the employer reported as Thursday, April 9, 2009. These five days were Friday, April 10, and Monday through Thursday, April 13-16. The representative correctly applied \$60.00 of the vacation pay benefits to the benefit week that ended April 11, 2009 and correctly applied \$240.00 in benefits to the week that ended April 18, 2009. Ms. Wilson was not eligible for benefits for the week ending April 18, 2009 because the apportioned vacation pay exceeded her weekly unemployment insurance benefit amount.

The evidence indicates additional issues with the reported wages. The evidence indicates that correct non-vacation wages amount that should have been reported for the week ending April 11, 2009 was \$146.25 (\$7.50 x 19.5 hours). Because that amount combined with the \$60.00 in vacation pay would have exceeded Ms. Wilson's weekly benefit amount by more than \$15.00, Ms. Wilson would still not have been eligible for benefits for the week ending April 11. Because Ms. Wilson received no benefits for the week ending April 11, there is no overpayment issue pertaining to that week.

The evidence indicates that Ms. Wilson erroneously reported \$300.00 in wages for the week ending April 25, 2009. The amount reported corresponds to the gross vacation amount (\$300.00) and Ms. Wilson's reporting of the amount occurred the same week the employer disbursed the vacation benefits to her. The correct amount of wages for the week ending April 25, 2009 was zero. Accordingly, Ms. Wilson was eligible for full benefits for the week ending April 25, 2009, provided she is otherwise eligible.

The evidence indicates that Ms. Wilson erroneously reported \$45.00 in wages for the week ending May 2, 2009. The correct amount should be zero. Accordingly, Ms. Wilson was eligible for full benefits for the week ending May 2, 2009, provided she is otherwise eligible.

The Agency has already recovered the overpayment of benefits for the week ending April 18, 2009 through a benefit off-set for the weeks ending September 26 and October 3, 2009.

The matter will be remanded to the Claims Division so that benefits may issue for the week ending April 25, 2009 and so that the balance of benefits due may issue for the week ending May 2, 2009.

**DECISION:**

The Agency representative's September 23, 2009, reference 02, decision is affirmed. The claimant received vacation pay that was deductible from benefits during the weeks ending April 11, 2009 and April 18, 2009. The claimant was not eligible for benefits for either of those weeks.

This matter is remanded to the Claims Division for disbursement of benefits to the claimant for the weeks ending April 25, 2009 and May 2, 2009 as outlined above.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs