

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JILL HEISTERKAMP**  
Claimant

**APPEAL 16A-UI-08438-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUENA VISTA UNIVERSITY**  
Employer

**OC: 05/08/16**  
**Claimant: Appellant (5)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

**STATEMENT OF THE CASE:**

Jill Heisterkamp (claimant) filed an appeal from the July 21, 2016 (reference 02) unemployment insurance decision that deducted vacation pay/PTO from benefits. After due notice was issued, a telephone conference hearing was held on August 22, 2016. The claimant participated personally. Buena Vista University (employer) participated through Human Resources Manager Megann Henrich. Claimant's Exhibits A through C were received. Department's Exhibits D-1 and D-2 were received. Official notice is taken of the administrative record, specifically the claimant's database read out (DBRO).

**ISSUES:**

Is the appeal timely?

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: The claimant was separated on May 5, 2016 which was also her last day of work. She received pay for accumulated but unused vacation pay/paid time off (PTO) in the amount of \$3,372.02, equivalent to 149.23 hours. The employer did not designate the period of time to which the vacation pay/PTO was to be applied. Claimant's weekly benefit amount (WBA) is \$431.00.

The agency determined that the claimant was not eligible for benefits for week ending May 12, 2016. However, her actual first week of unemployment was week ending May 14, 2016. The administrative record shows the claimant reported vacation in excess of \$999.00 for week ending May 28, 2016. She did not receive her weekly benefit amount that week.

The decision denying the claimant benefits based on her vacation pay was mailed on July 21, 2016 to her last known address. However, the claimant was traveling between July 9, 2016 and

August 1, 2016 visiting family and expanding her job search to other locales. Her mail was held at the post office until she retrieved it on August 2, 2016. The claimant filed her appeal to the decision the following day.

## **REASONING AND CONCLUSIONS OF LAW:**

*Is the appeal timely?*

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

The parties have ten days from the date of fact-finder's decision allowing or denying benefits to appeal it. See Iowa Code § 96.6(2). In this case, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

*Did the claimant receive vacation pay or PTO at separation? Is that amount deductible from benefits, and if so, for what period?*

For the reasons that follow, the administrative law judge concludes the claimant received vacation pay or PTO at separation which was not deducted in the correct week.

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 § 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 § 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 § 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.

Iowa Admin. Code r. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

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 law allows employers to designate the period of time to which a lump sum payment is allocated so that claimants have to exhaust their wage substitute payments before drawing benefits.

Because the employer did not designate a time period to which the vacation pay/PTO is to apply, the claimant's PTO amount of \$3,372.02 is correctly deducted from the first week of benefits following the separation, which is week ending May 14, 2016. However, since benefits were withheld during the week of May 28, 2016 for vacation, the decision is modified with no change in effect.

**DECISION:**

The July 21, 2016 (reference 02) unemployment insurance decision is modified with no change in effect. The employer did not designate a time period for the vacation pay/PTO is to apply and the benefits should have been withheld for week ending May 14, 2016.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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