

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHANTAY KEOBABPHA
Claimant

APPEAL NO. 16A-UI-05615-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/03/16
Claimant: Appellant (4)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 12, 2016, reference 02, decision that held she was not eligible for unemployment insurance benefits “for the first week of vacation which ended April 12, 2016.” The decision stated that the claimant had received or was eligible to receive vacation pay benefits for the week in question that equaled or exceeded her weekly unemployment insurance benefit amount. After due notice was issued, a hearing was held on June 6, 2016. Claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Laotian-English interpreter Sarah Chang of CTS Language Link assisted with the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-05616-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency’s record of benefits disbursed to the claimant and of the administrative file documents the claims deputy considered in making the May 12, 2016, reference 02, decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On Tuesday, April 5, 2016, the claimant was discharged from her full-time employment at Tyson Fresh Meats, Inc. The claimant’s final wage was \$15.10 per hour. During the week of the final week of employment, the claimant worked 14 hours prior to being discharged.

The claimant established a claim for unemployment insurance benefits that was deemed effective April 3, 2016. Workforce Development set the claimant’s weekly benefit amount at \$463.00. For the week that ended April 9, 2016, the claimant reported \$210.00 in wages for her final week of the employment and received \$368.00 in reduced unemployment insurance benefits. For the week that ended April 16, 2016, the claimant reported zero wages and received \$463.00 in benefits.

On April 6, 2016, Workforce Development provided electronic notice to the employer of the claimant's claim for unemployment insurance benefits. The employer has elected to receive electronic notice of unemployment insurance claims. The notice of claim provided the employer with an April 18, 2016 deadline for the employer's response to the notice of claim. Workforce Development received the employer's response on April 18, 2016. In the response, the employer included the following information: "Vacation Pay/ 1148.00/ Lump Sum/ End Date: 4/9/2016." The employer had indeed paid the claimant's accrued vacation pay to the claimant in connection with the separation from the employment.

In response to the vacation pay information provided by the employer, a Workforce Development claims deputy redetermined the claimant's unemployment insurance benefit eligibility. Unfortunately, the claims deputy did not sufficiently document their redetermination of benefits so that others could understand their thought process in redetermining benefits. The claims deputy concluded that the claimant had been overpaid \$827.00 in unemployment insurance benefits for the two-week period of April 3-16, 2016.

REASONING AND CONCLUSIONS OF LAW:

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 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 \$1,148.00 in vacation paid to the claimant in connection with the employment separation and designated the period to which the vacation pay should be applied to the week that ended April 9, 2016. Accordingly, the entire amount of the vacation pay should have been apportioned to that week when redetermining the claimant's unemployment insurance benefit eligibility. Because the apportioned vacation pay exceeded the claimant's unemployment insurance weekly benefit amount for that week, the claimant was not eligible for the \$368.00 in benefits that she received for that week. However, the correct apportionment of the vacation pay pursuant to the employer's timely instructions would have no impact on the claimant's eligibility for benefits for the period on or after April 10, 2016.

The claimant was not eligible for benefits for the week that ended April 9, 2016 because she received vacation pay for that week that equaled or exceeded her weekly benefit amount. However, vacation pay will not be deducted from the claimant's unemployment insurance benefits for the period on or after April 10, 2016.

DECISION:

The claims deputy's May 12, 2016, reference 02, decision is modified in favor of the claimant as follows. The claimant was not eligible for benefits for the week that ended April 9, 2016 because she received vacation pay for that week that equaled or exceeded her weekly benefit

amount. However, vacation pay will not be deducted from the claimant's unemployment insurance benefits for the period on or after April 10, 2016. The overpayment has been already been recovered through an offset of benefits during a subsequent claim week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs