

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIRSTEN DAY**  
Claimant

**APPEAL NO. 09A-UI-09714-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY**  
Employer

**Original Claim: 11/16/08  
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay/PTO  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Kirsten Day (claimant) appealed a representative's June 22, 2009 decision (reference 04) that concluded she had been overpaid \$301.00 in benefits she received for the week ending November 29, 2008, because she incorrectly reported vacation pay/PTO she received from Wells Dairy (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled on July 20, 2009.

The employer did not respond to the hearing notice and did not participate in the hearing. The claimant contacted the Appeals Section prior to the hearing and asked that a decision be made based on information in the administrative record because it was difficult to take time off from work. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Should the claimant's PTO payment be considered a vacation payment and deducted from her maximum weekly benefit amount?

What week should the claimant's vacation pay (PTO) be reported?

Has the claimant been overpaid \$301.00 for the week ending November 29, 2008?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of November 16, 2008. When the claimant filed her claim for the week ending November 22, she reported the PTO pay she would be receiving for November 21. The employer did not receive the November 21 PTO payment until the week ending November 29. The claimant received holiday pay for Thanksgiving during the week ending November 29, 2008, and reported this payment for the week ending November 29, 2008.

When the claimant filed her weekly claims, she reported the PTO time she earned and was entitled to receive during the week ending November 22, 2008. The claimant reported receiving \$749.00 for the week ending November 22, 2008, and did not receive any benefits for this week.

When the employer reported the payments the claimant received, the employer reported the November 21 PTO payment as being attributed to the week ending November 29. The employer

reported both the holiday pay and PTO or vacation pay as attributed to the week ending November 29, 2009. The claimant reported she had received \$100.00 for holiday pay for the week ending November 29, 2008. The claimant received partial benefits of \$301.00 for this week.

After the claimant appealed, the employer informed the Appeals Section the vacation pay or PTO pay for November 21 should have been attributed to the week ending November 22 instead of the week ending November 29.

**REASONING AND CONCLUSIONS OF LAW:**

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the specific dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be applied to the first five working days after the claimant's last day of work. Iowa Code § 96.5-7. However, the law specifically states that payment for unused sick leave is NOT considered wages for unemployment insurance purposes, which means it is not deductible from benefits. 871 IAC 24.13(4) d. (Emphasis supplied.)

The evidence does not establish whether the employer's PTO time is a hybrid or mixture of vacation and unused sick leave time. There is no breakdown of the percentage of vacation and unused sick leave time that has been attributed to the PTO time. Therefore, there is no way to divide the vacation pay from the unused sick leave pay. Under this factual situation, the PTO pay the claimant received cannot be deducted from her weekly benefit amount. This means the claimant correctly reported only the holiday pay for the week ending November 29, 2008. The claimant is eligible to receive \$301.00 in benefits for the week ending November 29, 2008.

In the alternative, the administrative record shows the employer intended the PTO time to be attributed to the week ending November 22 and not 29, 2008.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. Since the claimant is eligible to receive \$301.00 in benefits for the week ending November 29, 2008, she has not been overpaid any benefits for this week.

**DECISION:**

The representative's June 22, 2009 decision (reference 04) is reversed. The claimant properly reported the wages she earned and was entitled to receive for the week ending November 29, 2008. The claimant is legally entitled to receive \$301.00 in benefits for this week. The claimant has not been overpaid any benefits for the week ending November 29, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw