

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBORH WILCOXSON

Claimant

APPEAL NO: 21A-UI-22383-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREEN COUNTY MEDICAL CENTER

Employer

OC: 05/16/21

Claimant: Appellant (1R)

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

Iowa Admin. Code r. 871-24.13(2) – Deductible and Nondeductible Payments

Iowa Admin. Code r. 871-24.18 – Wage-Earnings Limitation

STATEMENT OF THE CASE:

On October 8, 2021, the claimant, Deborah Wilcoxson, filed an appeal from the October 1, 2021, (reference 03) unemployment insurance decision that established an overpayment of \$431.00 concluding the claimant incorrectly reported the wages she earned for the week ending June 5, 2021. The parties were properly notified about the hearing. A telephone hearing was held on December 2, 2021.

The claimant participated. The employer did not participate. After the hearing had been conducted, the employer requested a postponement. This request was denied because the hearing had already been conducted.

ISSUE:

Were wages, holiday pay, and/or vacation pay correctly deducted from claimant's benefits during the one week ending June 5, 2021?

Has the claimant been overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed weekly claims for the weeks ending May 22, 2021, May 29, 2021, and June 5, 2021. For the week ending June 5, 2021, the claimant worked June 2, 2021, June 3, 2021, and June 4, 2021. The claimant earned \$1,054.00 for her work that week. Claimant's weekly benefit amount is \$531.00. The claimant received \$431.00 in regular benefits for the week ending June 5, 2021.

During the hearing, the claimant explained that she believed she was supposed to report the amount she received in pay rather than what she earned. She stated that she believes she may

be eligible for benefits for the week ending May 22, 2021, because she reported wages, she received for that week rather than what she earned. The administrative record KCCO shows she reported receiving \$2,274.00 for the week ending May 22, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay and holiday pay was not correctly deducted from claimant's unemployment insurance benefits.

Iowa Code section 96.5(7) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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" or paragraph "b", 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.

Iowa Admin. Code r. 871-24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

Iowa Admin. Code r. 871-24.18 provides:

An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15.00 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15.00, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

In this case, the claimant's earnings for the week, \$1,054.00, exceeds \$545.00 or the total of her weekly benefit amount \$531.00 plus \$15.00. As a result, the claimant is not eligible for benefits for the week ending June 5, 2021. Now the administrative law judge will evaluate whether the claimant has been overpaid regular unemployment benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

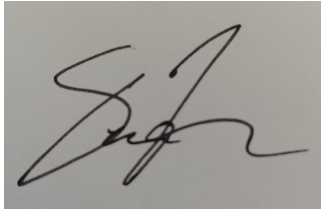
Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$431.00 in unemployment insurance benefits.

DECISION:

The October 1, 2021, (reference 03) decision is affirmed. The claimant has been overpaid benefits in the amount of \$431.00, which must be repaid.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue of the correction of the claimant's reported wages for the week ending May 22, 2021.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 21, 2021
Decision Dated and Mailed

smn/kmj