

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNON GAHERTY**  
Claimant

**APPEAL NO: 14A-UI-10735-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNIVERSITY OF DUBUQUE/BUS OFFICE**  
Employer

**OC: 08/31/14  
Claimant: Appellant (2)**

Iowa Code § 96.5(7) – Vacation Pay

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 6, 2014 determination (reference 03) that held she was not eligible to receive benefits for the weeks ending September 6 and 13 because vacation pay she received should be attributed to these weeks. The claimant participated at the November 4 hearing. Julie MacTaggart, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive benefits for the weeks ending September 6 and 13 because her vacation pay is not attributed to these weeks.

**ISSUE:**

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

**FINDINGS OF FACT:**

The last day the claimant worked for the employer was July 1, 2014. The employer paid her 76 hours or vacation pay or a gross payment of \$2852.25. The claimant received her vacation pay in a check issued on August 29, 2014.

The claimant did not file a claim for benefits until the week of August 31, 2014. She filed claims for the weeks ending September 6 and 13, 2014.

The claimant also received a severance payment, but she had to sign a release. If she had not signed the release, she would not have received a severance payment.

**REASONING AND CONCLUSIONS OF LAW:**

In this case, the "severance payment" amounts to consideration for the release signed by the claimant of all legal claims against the employer. The "severance payment" was contingent on the claimant signing a release of liability and she would not have been paid without signing the release. Therefore, this was not a deductible severance pay for unemployment insurance purposes.

When an employer makes a vacation payment or becomes obligated to make a payment, the 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 timely designate the dates to which vacation pay applies, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5(7), 871 IAC 24.16.

Since the "severance payment" the claimant received is not deductible for unemployment insurance purposes, the facts establish the 76 hours of vacation pay the claimant received should be attributed to weeks in early July or before the claimant established her claim for benefits. The claimant is eligible to receive benefits for the weeks ending September 6 and 13, 2014.

**DECISION:**

The representative's October 6, 2014 determination (reference 03) is reversed. The claimant's vacation pay is attributed to weeks in July or before the claimant established her claim. No vacation pay is attributed the weeks ending September 6 and 13 and she is eligible to receive benefits for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css