

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAULENE M VANDENHEUVEL
Claimant

LORING HOSPITAL
Employer

APPEAL 19R-UI-04933-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/14/19
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 3, 2019, (reference 04) unemployment insurance decision that deducted vacation pay/PTO from benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2019. Claimant participated and testified. Employer participated through, former human resource representative, Becky Pontious and dietary manager, Nancy Meusburger. Gary Eifcheid was also present on behalf of the employer, but did not participate. Employer's Exhibit 1 was received into evidence.

ISSUES:

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 April 16, 2019. At the time of her separation he was paid 138 hours of accumulated but unused personal/vacation time at a rate of \$11.45 per hour. (Exhibit 1). There was no requirement that she sign an agreement waiving certain rights to receive the pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did receive vacation pay, which was correctly deducted from benefits the week ending April 20, 2019, but incorrectly deducted from benefits for the week ending April 27, 2019.

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(3)c provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

Claimant received payment for accrued personal leave in the amount of 138 hours at her normal hourly rate at the time she was separated from employment. Claimant did not have to sign any type of agreement or relinquish any rights in order to receive this money. Iowa Code Section 96.5(7)c allows for up to five days of vacation pay to be deducted from benefits. However, Iowa Code Section 96.5(7)d specifically states “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...” Here, the claimant’s personal leave/vacation pay was correctly deducted from her first week of unemployment insurance benefits. However, her remaining vacation pay was then deducted from a later week. This deduction was improper, as it exceeded the one week limit delineated in Iowa Code Section 96.5(7)d. As such, claimant is entitled to her full benefit amount, provided she is otherwise eligible, for the week ending April 27, 2019.

DECISION:

The May 3, 2019, (reference 04) unemployment insurance decision is modified in favor of the appellant. Claimant’s vacation pay was correctly deducted for the week ending April 20, 2019, but was not correctly deducted for the week ending April 27, 2019. Claimant is entitled to her full benefit amount for the week ending April 27, 2019, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs