

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA R CLARK
Claimant

APPEAL NO. 11A-UI-06630-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRISIS INTERVENTION SERVICES
Employer

**OC: 04/17/11
Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated May 16, 2011, reference 03, that disqualified her for the week ending April 30, 2011 due to receiving vacation pay. A telephone hearing was held on June 16, 2011. The claimant participated. Johna Sullivan, Executive Director, participated for the employer.

ISSUE:

The issue is whether the claimant received vacation pay designated to the correct period.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer on April 19, 2011. She was paid \$12.98 an hour and she typically worked 8 hour days, Monday through Friday.

After her employment separation, claimant filed an unemployment claim effective April 17. She reported earnings and estimated vacation pay of about \$1,500.0 for the week ending April 23, and she received no benefit. She reported no earnings the week ending April 30, and received a benefit of \$309.00. When the employer received the claimant's notice of claim, it protested the vacation pay amount of \$700.92 to apply to a period from April 20 to April 28.

Based on 16 hours of work for April 18/19, claimant acknowledges she should have reported gross wages of \$207.68 (\$12.98 x 16) the week ending April 23. The employer bases the vacation pay on hours (not days), and the 54 hours should have represented 6.75 vacation days rather the period protested by it (\$103.85 vacation pay per day). The employer corrected the vacation pay amount to \$701.02.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 administrative law judge concludes claimant is disqualified from receiving any benefit the week ending April 30, 2011 due to receiving vacation pay from the employer.

The claimant's 2 days of earnings \$207.71 (April 18/19) are added to three days of vacation pay (\$311.56) to total \$519.27. These are excessive earnings and disqualify claimant for the week ending April 23. Since she reported a greater amount and received no benefit for this week, there is no issue.

The remaining 3.75 days of vacation are applied to the subsequent week ending April 30. The remaining vacation pay amount is \$389.44 that exceeds the claimant WBA of \$309.00, so she is disqualified the week ending April 30 due to excessive vacation pay earnings. Although the amount is less than that determined by the department (\$400.52) in the decision, the result is the same. The corrected hearing information facts does not affect the disqualification period.

DECISION:

The decision of the representative dated May 16, 2011, reference 03, is affirmed. The claimant is disqualified from receiving any benefit the week ending April 30, 2011 due to receiving excessive vacation pay.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css