

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERI J THOMPSON
Claimant

APPEAL 18A-UI-11609-DB-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
EMPLOYER

**OC: 10/28/18
Claimant: Appellant (1)**

Iowa Code § 96.5(5) – Deductions for severance pay
Iowa Code §96.5(7) – Deductions for vacation pay

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 28, 2018 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits for thirty eight (38) weeks ending July 20, 2019 due to the receipt of vacation pay, severance pay, and wages that were deductible from her unemployment insurance benefits. Claimant was properly notified of the hearing. A telephone hearing was held on December 14, 2018. The claimant participated personally. Don Dawson II participated on behalf of the claimant. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Are the claimant's wages, vacation pay and severance pay deductible from her benefits?

FINDINGS OF FACT:

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

Claimant permanently separated from full-time work with the employer due to a layoff. Her last day of work was October 31, 2018. She filed an initial claim for unemployment insurance benefits effective October 28, 2018. Her weekly benefit amount is \$467.00. She worked eight hours each day of October 29, 30, and 31, 2018. Her hourly rate of pay was \$28.49. She earned \$683.76 in wages the week-ending November 3, 2018.

She received vacation pay of \$2,051.28, which represented nine days of work at eight hours per day. She received this in one lump sum payment on October 31, 2018.

She also received severance pay of \$45,400.00 in one lump sum payment on October 31, 2018. She did not have to sign a contract or waive any rights in order to receive the severance pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.19(38) provides:

“Total and partial unemployment”.

a. An individual shall be deemed “totally unemployed” in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual’s then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual’s weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual’s regular job, earns at odd jobs less than the individual’s weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual’s regular job or trade in which the individual worked full-time and will again work full-time, if the individual’s employment, although temporarily suspended, has not been terminated.

(emphasis added).

Iowa Admin. Code r. 871—24.18 provides:

Wage-earnings limitation.

An individual who is partially unemployed may earn weekly a sum equal to the individual’s weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual’s weekly benefit amount plus \$15, 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 nearest dollar, in excess of one-fourth of the individual’s weekly benefit amount. This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

Iowa Code § 96.5 (5) and (7) provides:

Causes for disqualification. An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contributions to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration, or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

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.

(emphasis added).

Iowa Admin. Code r. 871—24.13 provides:

Deductible and nondeductible payments.

Procedures for deducting payments from benefits.

Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96). **The amount of any payment under subrule 24.13(3) shall be**

fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

(emphasis added).

Iowa Admin. Code r. 24.13(3)(c) provides:

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.

In this case, claimant earned wages in excess of her weekly benefit amount, plus \$15.00 for the first week of her unemployment insurance benefits claim which ended November 3, 2018. As such, she is not eligible for benefits for the week-ending November 3, 2018 due to earning excessive wages.

Claimant earned vacation pay in excess of her weekly benefit amount for the week-ending November 10, 2018, as such, she is not entitled to receive unemployment insurance benefits for that week due to earning excessive vacation pay.

Claimant received severance pay of \$45,400.00. Severance pay is fully deducted from benefits on a dollar-for-dollar basis. See Iowa Admin. Code r. 871-24.13(3)c. Using claimant's average weekly wage from her third quarter of 2017, she is ineligible for benefits for an additional thirty-six (36) weeks due to the deductibility of her severance pay. This means she is not eligible for benefits due to deductions beginning October 28, 2018 and ending July 20, 2019. Benefits are allowed after the above period, provided claimant is otherwise eligible.

DECISION:

The November 28, 2018 (reference 02) unemployment insurance decision is affirmed. The claimant is not eligible for unemployment insurance benefits for thirty-eight (38) weeks ending July 20, 2019 due to receipt of wages, vacation pay and severance pay that are deductible from her benefits. Benefits are allowed after the above period of time, if claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs