

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALLACE, THERESA, A
Claimant

APPEAL NO. 11A-UI-03932-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBL FINANCIAL GROUP INC
Employer

OC: 07/26/09
Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2011, reference 01, decision that denied benefits for the week ending August 1, 2009 based on an Agency conclusion that the claimant had received vacation pay deductible from her unemployment insurance benefits for that week. After due notice was issued, a hearing was held on April 20, 2011. Claimant participated. Dawn Hannum, Human Resources Specialist, represented the employer. Exhibits A through F were received into evidence. The hearing in this matter was consolidated with the hearing in appeal number 11A-UI-03933-JTT.

ISSUES:

Whether the claimant received vacation pay that is deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Wallace was employed by FBL Financial Group on a full-time basis until July 1, 2009, when she was laid off. At the time Ms. Wallace separated from the employment she had accrued but not yet used 22 days of vacation pay benefit. The gross dollar value of the vacation pay benefit was \$7,759.46. The employer disbursed the appropriate net amount to Ms. Wallace.

Ms. Wallace established a claim for unemployment insurance benefits that was effective July 26, 2009. Workforce Development established her weekly benefit amount at \$388.00. For the week ending August 1, 2009, Ms. Wallace reported zero wages and received \$388.00 in regular unemployment insurance benefits and an additional \$25.00 in federal stimulus benefits.

Ms. Wallace's eligibility for the additional \$25.00 was contingent upon Ms. Wallace being eligible for the regular unemployment insurance benefits.

On July 31, 2009, Workforce Development mailed a notice of claim to the employer. The notice provided an August 10, 2009 deadline for the employer's response. On the evening of August 10, 2009, the employer faxed its response to Workforce Development. The Unemployment Insurance Service Center received the employer's response after business hours on August 10, 2009 but date-stamped it is being received the following day, August 11, 2009. The employer did not contest liability on the claim. The employer provided information concerning the dates to which it wanted Ms. Wallace's vacation pay benefit applied when determining her eligibility for unemployment insurance benefits. The employer designated July 2, 2009 through July 31, 2009 as the dates to which the employer wanted the \$7,759.46 in vacation pay applied.

Based on the information provided by the employer, a Workforce representative apportioned the vacation pay and concluded that Ms. Wallace received vacation pay for the week ending August 1, 2009 that exceeded her weekly benefit amount and that Ms. Wallace was not eligible for unemployment insurance benefits for that week.

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 weight of the evidence in the record establishes that the employer made a timely designation of the period to which it wanted vacation pay benefits applied when determining Ms. Wallace's eligibility for unemployment insurance benefits. Under the statute, the Workforce Development representative was required to divide the total amount of vacation pay reported by the employer and disbursed to Ms. Wallace by the number of regular working days that fell within the period designated by the employer. Using this approach, there were two working days left in the week that ended July 4, 2009, and five working days in the weeks that ended July 11, 18, and 25, and August 1, 2009. The total number of regular working days during the period designated by the employer did indeed work out to be 22. Under the statute, the appropriate thing for the Workforce Development representative to do was to divide the total vacation pay amount, \$7,759.46, by 22 days to come up with a per day apportionment amount. This amount would be \$352.70, which would be rounded to \$353.00. Because the statute required that five days' worth of the apportioned vacation pay be applied to the week ending August 1, 2009, the total amount of vacation pay apportioned to that week was \$1,765.00. Because that amount exceeded the \$388.00 weekly unemployment insurance benefit amount by more than \$15.00, the apportionment of the vacation pay under the statute reduced Ms. Wallace's unemployment insurance benefit eligibility for the week ending August 1, 2009 to zero.

The Workforce Development representative correctly concluded that Ms. Wallace was not eligible for benefits for the week ending August 1, 2009 based on vacation pay for that week that exceeded her weekly benefit amount.

DECISION:

The Agency representative's March 25, 2011, reference 01, decision is affirmed. The claimant received vacation pay for the week ending August 1, 2009 that exceeded her weekly

unemployment insurance benefit amount by more than \$15.00. The claimant was not eligible for unemployment insurance benefits for the week ending August 1, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css