

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRISTIAN U MENDEZ CHANG
Claimant

APPEAL 18A-UI-00849-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMG MIDWEST INC
Employer

OC: 11/27/16
Claimant: Appellant (4)

Iowa Code § 96.5(5) – Severance Pay
Iowa Admin. Code r. 871-24.13(3)c – Severance Pay
Iowa Admin. Code r. 871-24.13(2)a – Holiday Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 10, 2018, (reference 05) unemployment insurance decision that deducted vacation pay and severance pay from benefits for the week-ending January 7, 2017. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2018. Claimant participated through CTS Language Link Spanish language interpreter Martin. Tonya Mendez participated with claimant and also acted as his representative. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUES:

Did the claimant receive holiday pay and if so, was it correctly deducted from benefits?
Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time through Wednesday, December 14, 2016. The employer paid him gross wages of \$480.00 through the last day of work. It paid him severance pay in the amount of \$1400.00, equivalent to 70 hours' pay. He was also paid for accumulated but unused vacation pay/paid time off (PTO) in the amount of \$400.00, equivalent to 20 hours, based upon a rate of pay at \$20.00 per hour. He also received holiday (Christmas) pay of \$160.00, equivalent to 8 hours. The employer did not designate the period of time to which the vacation pay/PTO was to be applied. Claimant's weekly benefit amount (WBA) is \$404.00. Claimant's payment records for the pertinent time period are as follows:

PAYMENT-RECORDS..

BWE-DATE	RPT-CODE	AMT-RP	AMOUNT
12/17/16	WAGE	.00	404.00
12/24/16	VACATION	999.00	.00
12/31/16	WAGE	.00	404.00
01/07/17	WAGE	.00	404.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes benefits were properly withheld for the week-ending December 31, 2016, due to the receipt of holiday pay and severance pay. Benefits were improperly deducted from benefits for the week-ending January 7, 2017, because claimant was entitled to a gross benefit payment of \$364.00 after deduction of the final two hours' severance pay.

Iowa Admin. Code r. 871-24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. *Holiday pay.* However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

Iowa Code section 96.5(5)a(1) provides:

An individual shall be disqualified for benefits:

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.

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.

The general policy underlying the deductibility of vacation pay/PTO from benefit eligibility is "that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor." *Lefebure Corp. v. Iowa Dep't of Job Serv.*, 341 N.W.2d 768, 771 (Iowa 1983); see also, 14 A.L.R.4th 1175 §2(a) (1982). Thus, "vacation pay" is deductible because it is considered a form of "wage," which the statute further defines as any "remuneration for personal services . . ." Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer. The law allows employers to designate the period of time to which a lump sum payment is allocated so that claimants have to exhaust their wage substitute payments before drawing benefits.

The Unemployment Insurance Handbook at page 21 provides:

FULLY DEDUCTIBLE FROM THE BENEFIT PAYMENT

Each dollar the individual earns reduces their benefit payment by one dollar (dollar-for-dollar).

- Vacation pay and paid time off
- Severance pay
- Pension, retirement, annuity, or any other similar period payment
- Workers' Compensation (temporary total disability)
- Paid excused leave (funeral or personal leave)

Example: An individual's WBA is \$400 and they receive a \$370 vacation payout for the week they are claiming.

- $\$400 - \$370 = \$30$. \$30 is the payment amount for the week

Given the evidence, the reporting and payment records should appear (broken down by type for explanatory purposes only) as follows:

PAYMENT-RECORDS..

BWE-DATE	RPT-CODE	AMT-RP	AMOUNT
12/17/16	WAGE (24 HR)	480.00	.00
12/17/16	VAC (16 HR)	320.00	.00
12/24/16	VAC (4 HR)	80.00	.00
12/24/16	SEV (36 HR)	720.00	.00
12/31/16	HOL (8 HR)	160.00	.00
12/31/16	SEV (32 HR)	640.00	.00
01/07/17	SEV (2 HR)	40.00	364.00

DECISION:

The January 10, 2018, (reference 05) unemployment insurance decision is modified in favor of the appellant. Benefits were properly withheld for the week-ending December 31, 2016, due to the receipt of holiday pay and severance pay. Benefits were improperly deducted from benefits for the week-ending January 7, 2017. Claimant was entitled to a gross benefit payment of \$364.00 after deduction of the final two hours' severance pay.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs