

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER L HEINS
Claimant

APPEAL NO. 20A-UI-01114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

OC: 12/29/19
Claimant: Respondent (1)

Iowa Code Section 96.5(7) – Vacation Pay
Iowa Code Section 96.5(5) – Severance Pay

STATEMENT OF THE CASE:

The *employer* filed a timely appeal from the February 3, 2020, reference 02, decision that denied benefits to the claimant for a three-week period of December 29, 2019 through January 18, 2020, based on the deputy's conclusion that the claimant received or was entitled to receive vacation pay, paid time off, holiday pay, severance pay and/or separation pay that was deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on February 21, 2020. Claimant Heather Heins participated. Daniel Nettie represented the employer. The hearing in this matter was consolidated with an appeal hearing regarding Appeal Number 20A-UI-01115-JTT. Exhibits 1 and 2 and Department Exhibits D-1 through D-4 were received into evidence.

ISSUES:

Whether the claimant received vacation pay and/or severance pay that is deductible from her unemployment insurance benefits.

Whether the deputy correctly deducted vacation pay and/or severance pay from the claimant's unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Heather Heins established an original claim for benefits that was effective December 29, 2019. Ms. Heins established the claim in response to her separation from full-time employment with Hillcrest Family Services. Ms. Heins last performed work for the employer on Friday, December 27, 2019. Ms. Heins had been a salaried Program Administrator for the employer. Her annual salary was \$49,500.00, which amounted to \$951.92 per week. At the time Ms. Heins separated from the employment, she had 213 hours of accrued but unused paid time off (PTO)/vacation pay benefit. The gross value of the PTO pay was \$4,880.52. The employer paid the PTO pay to Ms. Heins on January 10, 2020. In connection with Ms. Heins' separation from the employment, the employer also paid Ms. Heins the equivalent of two weeks' wages, \$1,904.00, in severance pay. Ms. Heins did not have to execute a legal settlement agreement or waive any rights in order to receive the severance pay. The employer paid the severance pay to Ms. Heins on January 10, 2020.

In connection with Ms. Hines' December 29, 2019 original claim for unemployment insurance benefits, Iowa Workforce Development set Ms. Heins weekly benefit amount at \$500.00. By the time of the February 21, 2020 appeal hearing, Ms. Heins had made seven weekly claims for the seven consecutive weeks between December 29, 2019 and February 15, 2020. When Ms. Heins made her weekly claim report for the week that ended January 4, 2020, she reported \$5,855.00 as vacation pay and received no unemployment insurance benefits. The reporting system did not provide a means to separate the severance pay into a separate reporting category. The amount Ms. Heins' reported included the \$4,880.52 in PTO/vacation pay plus \$952.00 in severance pay. When Ms. Heins made her claim for the week that ended January 11, 2020, she reported \$952.00 in vacation pay and received no benefits. The amount Ms. Heins reported as vacation pay was actually one half of the severance pay amount. When Ms. Heins made her weekly claim for the next five claim weeks, she reported no wages.

On December 30, 2019, Iowa Workforce Development electronically posted a notice of claim to the employer's SIDES account. The employer has elected to receive electronic notice of claims. At about 1:00 a.m. on December 31, 2019, Iowa Workforce Development sent an email message to the employer's designated email address of record to alert the employer to Ms. Heins' claim, to the notice of claim posted to the employer's SIDES account, and to the January 10, 2020 deadline for the employer's response. The employer electronically filed its response on January 8, 2020. The employer included in its response an entry regarding the \$1,904.00 in severance pay. The employer indicated that the severance pay had been issued on January 10, 2020. The employer did not designate the period to which the severance pay should be apportioned when determining Ms. Heins' eligibility for unemployment insurance benefits. The employer did not mention the PTO/vacation pay in its response to the notice of claim.

Upon receipt of the employer's response to the notice of claim, and also based on Ms. Heins report of receipt of vacation pay and severance pay, an Iowa Workforce Development deputy apportioned the entire PTO/vacation amount, \$4,881.00 (rounded), to the benefit week that ended January 4, 2020 and concluded Ms. Heins was not eligible for benefits for that week. The deputy apportioned one half of the \$1,904.00 severance pay amount, \$952.00, to the benefit week that ended January 11, 2020 and apportioned the other half of the severance pay, \$952.00, to the benefit week that ended January 18, 2020. The deputy concluded that Ms. Heins was not eligible for benefits for the weeks that ended January 11 and January 18, 2020, based on her receipt of severance pay.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

Paid Time Off (PTO) is treated as vacation pay and is fully deductible from unemployment insurance benefits. See Iowa Administrative Code rule 871-24.13(3)(b) and 871-24.16. Unless otherwise specified by the employer in the response to the notice of claim, the amount of the vacation pay shall be converted by Workforce Development to eight hours for a normal workday and five workdays for a normal workweek.

The deputy correctly apportioned the entire PTO/vacation pay amount to the benefit week that ended January 4, 2020. The employer had not reported the vacation pay and had not designate the period to which the PTO/vacation pay should be apportioned. Because Ms. Heins had last performed for the employer on Friday, December 27, 2019, the deputy followed the instructions set forth in the statute and the administrative code rule by apportioning the entire PTO/vacation pay amount to the week that followed the last day worked. Ms. Heins received \$4,880.52 in PTO/vacation pay that was deductible from her unemployment insurance benefit eligibility for the week that ended January 4, 2020 week. The PTO/vacation pay exceeded Ms. Heins' weekly benefit amount. Ms. Heins was not eligible for unemployment insurance benefits for the week that ended January 4, 2020.

Iowa Code section 96.5(5) provides, in relevant part, as follows:

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.

...

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. ...

Iowa Administrative Code rule 871-24.13(3)(c) echoes the statute as follows:

(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.

However, Iowa Administrative Code rule 871-24.13(4)(o) provides as follows:

24.13(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

...

o. Payments conditional upon the release of any rights.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a lay off. The Appeals Section has historically excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the employee's separation from the employment. Iowa Administrative Code rule 871-24.13(4)(o) codifies that exclusion.

The severance pay Ms. Heins received from the employer was indeed severance pay within the meaning of the unemployment insurance law and was deductible from her unemployment insurance benefit eligibility. Iowa Administrative Code rule 871-24.13(1) provides, in relevant part, as follows:

Deductible and nondeductible payments. 24.13(1)

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 response, 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, the unemployment insurance representative shall determine days 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(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

[Emphasis added.]

The deputy correctly apportioned the severance pay when determining Ms. Heins' eligibility for unemployment insurance benefits. The employer provided the severance pay amount, \$1,904.00, but did not designate the period to which the severance pay should be apportioned. The deputy appropriately apportioned half of the \$1,904.00 total severance amount to the week that ended January 11, 2020 and the other half to the week that ended January 18, 2020. Based on Ms. Heins' receipt of severance pay for those two weeks that exceeded her weekly unemployment insurance benefit amount, Ms. Heins was not eligible for benefits for the weeks that ended January 11 and 18, 2020.

DECISION:

The February 3, 2020, reference 02, decision is affirmed. The claimant received PTO/vacation pay that was deductible from her unemployment insurance benefits for the week that ended January 4, 2020. The vacation pay exceeded the claimant's weekly benefit amount. The claimant is not eligible for benefits for the week that ended January 4, 2020. The claimant received severance pay that was deductible from her unemployment insurance benefits for the weeks that ended January 11 and 18, 2020. The severance pay exceeded the claimant's weekly benefit amount for each week. The claimant is not eligible for benefits for the weeks that ended January 11 and 18, 2020.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn