

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLENE K AHLERS
Claimant

APPEAL NO. 10A-UI-03842-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RACING CHAMPIONS ERTL INC
Employer

OC: 05/03/09
Claimant: Appellant (2)

871 IAC 24.13(3)(b) – Paid Time Off
Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 9, 2010, reference 01, which held claimant had been overpaid unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 27, 2010. Claimant participated. Employer participated by Karen Nepper, Assistant Human Resources Manager. The record consists of the testimony of Darlene Ahlers; the testimony of Karen Nepper; and Claimant's Exhibit A.

ISSUE:

Whether the claimant has been overpaid unemployment insurance benefits

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case provides workers a benefit called paid time off or PTO. Pursuant to a collective bargaining agreement, an employee's number of PTO is determined by a formula based on gross earnings. PTO hours can be used as the employee wishes: vacation, sick days, and personal business. There is no other paid vacation or paid sick leave unless an employee qualifies for short-term disability. For the week between May 3, 2009 and May 9, 2009, the claimant was on layoff. She did receive four hours of PTO pay. (Exhibit A)

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.

Iowa Administrative Code rule 871 IAC 24.13(3)(b) provides as follows:

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:

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be fully deductible only when taken in conjunction with a scheduled period of vacation in which case it shall be treated as vacation and be fully deductible in the manner prescribed in rule 24.16(96).

Paid time off (PTO) is the equivalent of excused personal leave---paid time off that an employee accrues and that can be used for sick leave, vacation leave or other personal time off pursuant to the employer's PTO policy. Paid time off is not equivalent to vacation pay, which is a separate and distinct benefit the Iowa Legislature made deductible from unemployment insurance benefits by enacting Iowa Code section 96.5(7). Under the administrative rule, paid time off can only be deducted from unemployment insurance benefits when it is used during the course of the employment for a scheduled vacation.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant did not receive vacation pay that was deductible from her unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 9, 2010, reference 01, is reversed. The claimant was not overpaid \$135.00 in unemployment insurance benefits for the week between May 3, 2009 and May 9, 2009.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css