

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE L HAGEN
Claimant

APPEAL NO. 11A-UI-09196-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IPSCO TUBULARS INC
Employer

OC: 06/05/11
Claimant: Respondent (1-R)

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

STATEMENT OF THE CASE:

The employer, IPSCO, filed an appeal from a decision dated June 29, 2011, reference 01. The decision disqualified the claimant, Candice Hagen from receiving unemployment benefits for the one-week period ending June 11, 2011, due to the receipt of vacation pay. After due notice was issued a hearing was held by telephone conference call on August 3, 2011. The claimant participated on her own behalf. The participated by Human Resources Specialist Kathy Borkgren.

ISSUE:

The issue is whether the claimant is disqualified from receiving benefits due to the receipt of vacation pay.

FINDINGS OF FACT:

The claimant was separated on May 31, 2011, and received vacation pay in the amount of \$2,640.00 based upon a rate of pay at \$20.00 per hour. The employer did not designate the period of time to which the vacation pay was to be applied.

Ms. Hagen also received \$9,000.00 in severance pay but she was required to sign an agreement forfeiting some rights in order to receive it. When she consulted with a representative from her local Workforce Center she was not asked, and did not say, she had to sign such an agreement. As a result the representative gave her incorrect advice and said she should not file a weekly claim until August 15, 2011, when the period covered by the severance pay had ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay was deducted for the correct period.

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.

Because the employer did not designate a time period to which the vacation pay is to apply, the entire amount was correctly deducted from the first week of benefits following the separation.

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

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

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

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

c. 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, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

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", "b", or "c", 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.

871 IAC 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.

A payment after separation which is conditioned upon execution of a release or waiver of claims is not "severance pay" as contemplated by the statute. It is more aptly characterized as consideration given by the employer to the claimant for waiver of possible causes of action against the employer and not simply payment for prior years of service to the employer. At hearing the employer admitted that the payment was in exchange for the claimant's signing of the release, thus it cannot be considered severance pay that is deductible from the claimant's unemployment insurance benefits. None of the \$9,000.00 should have been deducted from the claimant's unemployment insurance benefits.

The claimant may be entitled to retroactive benefits due to the incorrect instructions given by the local workforce representative.

DECISION:

The representative's decision of June 29, 2011, reference 01, is affirmed. Candice Hagen shall have vacation pay deducted from the first week of her unemployment benefits as the employer did not designate the period to which it should be attributed.

The issue of retroactive benefits due to inaccurate information given to the claimant should be remanded for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css