

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY M SCHEETZ

Claimant

APPEAL 20A-UI-00740-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES

Employer

OC: 12/15/19

Claimant: Appellant (1)

Iowa Code § 96.5(5) – Severance Pay

Iowa Code § 96.5(7) – Wages, PTO

Iowa Admin. Code r. 871—24.13(1)- Deductible and Non-deductible Payments

Iowa Admin. Code r. 871—24.18 – Wage Earnings Limitation

Iowa Admin. Code r. 871-24.13(3)c – Severance Pay

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 16, 2020 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits for the three-week period ending January 4, 2020 because she was entitled to receive wages, vacation pay, paid time off, holiday pay, severance pay, or separation pay which was considered to be wages. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2020. The claimant, Amy M. Scheetz, participated personally. The employer, Hillcrest Family Services, participated through witness Daniel Nettie. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUE:

Were wages, PTO and severance pay correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed for this employer from August 22, 2016 until December 18, 2019 as a full-time crisis counselor. She earned \$16.50 per hour as a crisis counselor at the employer's mental health services facility. She permanently separated from that position on December 18, 2019.

She filed her original claim for unemployment insurance benefits effective December 15, 2019. Her weekly benefit amount is \$415.00. Claimant's base period consists of the third quarter of 2018 through the second quarter of 2019. Wages reported in each of those four quarters are as follows:

	2018/3	2018/4	2019/1	2019/2
Hillcrest Family Services	\$9,555	\$9,434	\$7,460	\$9,171

Her highest quarter is the 3rd quarter of 2018. Based upon her highest quarterly, her average weekly wage is \$735.00.

For the benefit week beginning December 15, 2019, the claimant worked 32.3 hours at the hourly rate of pay of \$16.50. She earned wages of \$533.00 for work performed between December 15, 2019 through December 18, 2019. Her employment ended on Wednesday, December 18, 2019.

For the week beginning December 22, 2019 through December 28, 2019, claimant worked as needed as a PRN for 5.85 hours an hourly rate of pay of \$14.80. She earned wages of \$87.00 during that benefit week.

For the week beginning December 29, 2019 through January 4, 2020, claimant worked as needed as a PRN for 8.17 hours at an hourly rate of pay of \$16.50 and 1.85 hours at the rate of \$14.80. She earned wages of \$162.00 during that benefit week.

Claimant earned severance pay when she separated from employment as a crisis counselor on December 18, 2019. She earned a lump sum severance payment of \$1,320.00, which she received in January of 2020. Claimant earned PTO when she separated from employment as a crisis counselor on December 18, 2019. The lump sum earnings for PTO was \$1,154.00.

On Thursday, January 9, 2020 she started another full-time position with this same employer as a credentialing specialist. She works forty hours per week in this new position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(5) provides:

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.

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

(3) 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, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

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. 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.

(emphasis added).

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.

(emphasis added).

Iowa Admin. Code r. 871—24.13(1) provides:

Deductible and nondeductible payments.

(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(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment 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 first day the vacation pay can be applied is the first workday after the separation. 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).

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.

(emphasis added).

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.

Iowa Admin. Code r. 871—24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted "severance pay" to include a benefit used to attract employees or "conscience money" to help a former employee survive a lay off. It has traditionally 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 separation from the employment. Because there was no agreement required wherein the claimant relinquished her right to file any further grievances between the parties regarding her severance pay, it is deductible on a dollar-for-dollar basis from her Unemployment Insurance Benefits under Iowa Code section 96.5(5).

Pursuant to Iowa Admin. Code r. 871—24.13(1), 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. Claimant's average weekly wage from her high quarter is \$735.00. Claimant's severance pay of \$1,320.00 amounts to 1.80 weeks in which severance pay is applied.

Because claimant earned wages of \$533.00, as well as two days of vacation pay of \$462.00, for the benefit week of December 15, 2020 through December 21, 2020, she is not eligible for benefits for that one-week period due to earning wages and vacation pay in excess of her weekly-benefit amount. See Iowa Admin. Code r. 871—24.18.

Because claimant earned wages of \$87.00, as well as the remainder of her three additional days of vacation pay of \$693.00, plus \$735.00 in severance pay, for the benefit week of December 22, 2019 through December 28, 2019, she is not eligible for benefits for that one-

week period due to earning wages and vacation pay in excess of her weekly-benefit amount. See Iowa Admin. Code r. 871—24.18.

Because claimant earned wages of \$162.00 and her remaining severance pay of \$585.00, for the benefit week of December 29, 2019 through January 4, 2020, she is not eligible for benefits for that one-week period due to earning excess wages and severance pay in excess of her weekly-benefit amount.

As such, claimant is ineligible for benefits for three weeks from December 15, 2019 through January 4, 2020 due to claimant's earnings of wages, vacation pay, and severance pay, which are deductible from her weekly benefit amount.

DECISION:

The January 16, 2020 (reference 03) unemployment insurance decision is affirmed. The claimant is not eligible for benefits for three weeks from December 15, 2019 through January 4, 2020 due to her earnings of wages, vacation pay, and severance pay, which are deductible from her weekly benefit amount.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs