

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDREW BURGE**  
Claimant

**APPEAL 17A-UI-09005-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07/30/17  
Claimant: Appellant (1)**

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Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 29, 2017, (reference 03) unemployment insurance decision that found the claimant overpaid unemployment insurance benefits based upon receipt of vacation pay. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2017. Claimant participated. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate. Claimant's Exhibit A was received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

**ISSUES:**

Did the claimant receive vacation pay or PTO at separation?  
Is that amount deductible from benefits, and if so, for what period?  
Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's last day of work was Friday, July 28, 2017, and he was paid regular wages through Saturday, August 12, 2017. He received two days' accumulated but unused vacation pay of \$420.30 on August 18, 2017. (Claimant's Exhibit A) Claimant reported wages and vacation pay as follows:

PAYMENT-RECORDS						
BWE-DATE	RPT-CODE	AMT-RP	ISSUE-DT	P	PAY-CODE	AMOUNT
08/05/17	VACATION	47.00	08/23/17		PAID-DC	408.00
08/12/17	VACATION	47.00	08/23/17		PAID-DC	408.00
08/19/17	VACATION	420.00	08/23/17		PAID-DC	35.00
08/26/17	CLEAR	.00	08/28/17		OFFSET	455.00
09/02/17	CLEAR	.00	09/05/17		OFFSET	361.00
09/02/17	SPLIT	.00	09/05/17		PAID-DC	94.00

The employer did designate the period of time to which the vacation pay was to be applied. Claimant's weekly benefit amount (WBA) is \$408.00.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the vacation pay/PTO 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.

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.

The general policy underlying the deductibility of "vacation pay" 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. Because the employer did not designate a time period to which the vacation pay is to apply and the calculation was correct, the entire amount was correctly deducted from the first week of benefits following the last payment of regular wages.

Iowa Code section 96.3(7) provides, in pertinent part:

7. *Recovery of overpayment of benefits.*

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Since the vacation pay/PTO was properly deducted from benefits, claimant received gross benefits of \$816.00 for the two-week period ending August 12, 2017, to which he was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The August 29, 2017, (reference 03) unemployment insurance decision is affirmed. Vacation pay/PTO was properly deducted from benefits. The claimant is overpaid benefits in the amount of \$816.00. That overpayment has been offset during the two weeks-ending September 2, 2017.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs