

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY HADISH**  
Claimant

**APPEAL NO. 13A-UI-02810-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAZETTE COMMUNICATIONS INC**  
Employer

**OC: 01/20/13**  
**Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 1, 2013, reference 01, decision that held that claimant was not eligible to receive unemployment insurance benefits for the three weeks ending February 9, 2013. After due notice was issued, a hearing was held by telephone conference call on April 4, 2013. The claimant participated personally. The employer participated by Becky Woodard Cole, a human resources business partner. Official notice is taken of agency records. The employer provided the administrative law judge with a copy of the notice of claim and an explanation of the employer's policy of PTO. These documents are marked and received into evidence as Employer's Exhibits 1-3.

**ISSUE:**

Whether vacation pay was deducted for the correct period.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The claimant was separated from her employment with the employer on January 20, 2013. One of the benefits to which the claimant was entitled while she was working was Paid Time Off or PTO. PTO hours were used to cover vacation; sick days; and other personal days off. When the claimant's employment ended, she received \$2,904.49 for PTO hours that she had earned but not taken.

The representative concluded that the PTO hours were vacation pay and should have been deducted from the three weeks ending February 9, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits

during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code Section 96.5-7. If paid time off is "vacation pay", the representative's decision was correct and the claimant was ineligible for benefits for the three weeks ending February 9, 2013.

The real question is whether PTO should be treated as vacation pay under Iowa Code section 96.5-7. The problem is that the statute and rule (871 IAC 24.16) requires vacation pay to be deducted, but 871 IAC 24.13(4) states that payments for unused sick leave are not. Employers who set up a PTO program set up a program that merges these two kinds of time that the law says should be treated differently unemployment purposes. To complicate things further, ordinary wages are not deducted dollar for dollar, but instead the wage deduction formula of Iowa Code section 96.6-3 is used.

The legislature has made "vacation pay" deductible and neither the statute nor the rules – which identify nearly a dozen different types of payment by name – say a word about PTO. Applying the canon of statutory interpretation that "the expression of one thing is the exclusions of others" and when ambiguous the unemployment insurance law is to be construed liberally to achieve the legislative goals of minimizing the burden of unemployment, the administrative law judge concludes that if the legislature or agency want PTO deducted, they should say so expressly. See Smith v. Iowa Employment Security Commission, 212 N.W.2d 471, 473 (Iowa 1973), Brumley v. Iowa Dept. of Job Service, 292 N.W.2d 126, 129 (Iowa 1980).

Finally, the administrative law judge has reviewed 871 IAC 24.13(3)b, which lists "excused personal leave" as an item "fully deductible payments from benefits" but finds it unhelpful in deciding this case. First, a payment for unused PTO at the time of separation is not "personal leave with pay granted to an employee for an absence due to personal reasons" as the rule defines excused personal leave. Second, the administrative law judge is unaware of any situation where PTO is referred to as "casual pay" or "random pay." The rule states "excused personal leave" is "full deductible" (meaning dollar for dollar, rather than using the wage deduction formula of 871 IAC 24.18) only if it is taken during a scheduled vacation. It does not say one way or the other whether excused personal leave is deductible if paid outside of a scheduled vacation.

The claimant should be awarded full benefits for the three weeks ending February 9, 2013, since PTO is not deductible as vacation pay.

**DECISION:**

The unemployment insurance decision dated March 1, 2013, reference 01, is reversed. The claimant is awarded full benefits for the three weeks ending February 9, 2013.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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