

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ADAM WARD
Claimant

**UNITED STATES CELLULAR
CORPORATION**
Employer

APPEAL 17A-UI-00265-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (1)

Iowa Code § 96.5(7) – Receipt of Vacation Pay
Iowa Code § 96.5(5) – Severance Pay
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 6, 2017, (reference 01) unemployment insurance decision that reduced benefits based upon vacation pay. The parties were properly notified about the hearing. A telephone hearing was held on January 31, 2017. The claimant participated personally. Dawn Ward, wife, also testified. The employer did not register for the hearing with the Appeals Bureau and did not participate.

Department Exhibits D-1 (appeal letter) and D-2 (final paystub) were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents and payments. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant receive vacation pay at separation and if so, was it correctly deducted from benefits?

Did the claimant receive severance pay and if so, was it correctly deducted from benefits?

Has the claimant been overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time and was separated from employment on November 22, 2016, when he was discharged. The claimant received no severance or separation pay.

The claimant worked ten hours the final week of employment; one hour on Sunday, eight hours on Monday and one hour on Tuesday, November 22, 2016 before being discharged. The claimant's rate of pay was \$21.39.

The claimant established his unemployment insurance claim with an effective date of November 20, 2016. On December 2, 2016, the claimant received a final paycheck including wages, overtime pay, and shift differential pay. In addition, the claimant was paid 27.86 hours in unused vacation. The employer did designate the period of time to which the vacation pay was to be applied when responding to the initial claim for benefits, from the period of November 22, 2016 through November 26, 2016. The claimant's vacation pay was then modified and deducted for the one week period ending November 26, 2016. The issue of whether the claimant's vacation pay was correctly deducted for the week ending December 3, 2016, is addressed in Appeal 17A-UI-00266-JCT.

The claimant received unemployment insurance benefits in the amount of \$305.00 and an offset payment of benefits due to a prior overpayment in the amount of \$48.00 for the week ending November 20, 2016. The claimant's weekly benefit amount (WBA) is \$548.00. The administrative records reflect there was an offset of benefits in the amount of \$548.00 for the week ending January 7, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay should be deducted from the week of November 26, 2016 only. The claimant did not receive severance pay upon separation.

Iowa Code § 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. The claimant worked ten hours his final week of work and then was paid 27.86 hours in vacation pay for the remainder of the week. Because the employer did designate a time period to which the vacation pay is to apply (through November 26, 2016) and the calculation was correct, the entire amount was should be deducted from only the first week of benefits following the separation. The claimant

was overpaid benefits in the amount of \$353.00 for that week. However, the benefits were later offset for the week ending January 7, 2017.

DECISION:

The January 6, 2017, (reference 01) unemployment insurance decision is affirmed. Vacation pay/PTO was properly deducted from benefits for the week ending November 26, 2016. The claimant is overpaid benefits in the amount of \$353.00 for that week only. Any repayment of benefits should take into account the offset for the week ending January 7, 2017.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs