

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA VAN KLAVERN
Claimant

APPEAL 22A-UI-02957-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PHYSICIANS CLINIC OF IOWA PC
Employer

**OC: 11/28/21
Claimant: Appellant (4)**

Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO
Iowa Admin. Code r. 871-24.13(2) – Deductible and Nondeductible Payments
Iowa Admin. Code r. 871-24.18 – Wage-Earnings Limitation

STATEMENT OF THE CASE:

On January 10, 2022, the claimant, Melissa Van Klavern, filed an appeal from the January 5, 2022 (reference 05) unemployment insurance decision that concluded she was not eligible for benefits due to wages and holiday pay she earned that should be deducted from the two-week period ending December 11, 2021. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2022. The claimant participated. The employer did not participate. Exhibits 1, 2, 3, 4, and A were received into the record.

ISSUE:

Were wages, holiday pay, and/or vacation pay correctly deducted from claimant's benefits during the one week ending December 11, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was terminated on November 30, 2021.

The claimant's first week of unemployment was the one-week period ending December 4, 2021. The claimant did not work or earn any wages that week. The employer paid the claimant \$240.00 or 16 hours in holiday pay for November 27, 2020 and November 28, 2020.

The employer paid \$530.70 or the 35.38 hours of vacation pay for the one-week period ending December 11, 2021.

The claimant did not earn insured wages from the employer for the week ending December 18, 2021.

The claimant's weekly benefit amount is \$435.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay and holiday pay was not correctly deducted from claimant's unemployment insurance benefits.

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 96.1A, 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 96.1A, 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 96.1A, 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.

Iowa Admin. Code r. 871-24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

In this case, the vacation and holiday pay were not correctly deducted from claimant's unemployment insurance benefits. It should have been deducted as follows for the week ending December 4, 2021:

Holiday pay/Wages \$240.00 – (25% of \$435 WBA = \$132) = \$132 deduction from WBA

\$435 WBA - \$132 deduction from WBA = \$303 partial weekly benefit amount

The claimant is eligible to receive \$303.00 for the week ending December 4, 2021.

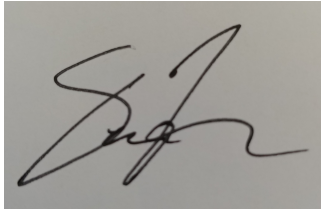
Iowa Admin. Code r. 871-24.18 provides:

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.

It should have been deducted as follows for the week ending December 11, 2021: The claimant received \$530.70 for the week ending December 11, 2021. As a result, the claimant is not eligible for benefits for the week ending December 11, 2021. That is because the vacation payout is considered wages and exceeds her weekly benefit amount plus \$15.00. Benefits are denied for the week ending December 11, 2021.

DECISION:

The January 5, 2022 (reference 05) unemployment insurance decision is modified in favor of the claimant. The claimant is eligible for \$303.00 in benefits for the week ending December 4, 2021. The claimant is ineligible for benefits the week ending December 11, 2021 because she earned wages in excess of her weekly benefit amount plus \$15.00 for that week.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 23, 2022
Decision Dated and Mailed

smn/kmj