

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L ATWATER
Claimant

APPEAL NO. 20A-UI-00994-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT HEINZ FOODS COMPANY LLC
Employer

OC: 12/22/19
Claimant: Appellant (4)

871-24.13(2)(a) – Holiday Pay
Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

David Atwater filed a timely appeal from the January 28, 2020, reference 01, decision that denied benefits for the two-week period of December 22, 2019 through January 4, 2020, based on the deputy's conclusion that Mr. Atwater received or was entitled to receive vacation pay, paid time off, holiday pay, severance pay and/or separation pay that was deductible from his unemployment insurance benefit eligibility. After due notice was issued, a hearing was held on February 18, 2020. Mr. Atwater participated. The employer did not provide a telephone number for the appeal hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-00995-JTT. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, and the SIDES notice of claim/employer response. The administrative law judge left the hearing record open to provide the claimant an opportunity to submit pay stubs for the weeks in question, which pay stubs were submitted and received into the hearing record on February 18, 2020 as Exhibit A.

ISSUE:

Whether the claimant received or was entitled to receive vacation pay, paid time off, holiday pay, severance pay and/or separation pay that was deductible from his unemployment insurance benefit eligibility for the two-weeks between December 22, 2019 through January 4, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Atwater is employed with Kraft Heinz Foods Company, L.L.C. as a full-time cook. His hourly wage is \$24.45. Mr. Atwater usually works 12-hour shifts Monday through Friday and an eight-hour shift on Saturday. Mr. Atwater receive his regular wage for the first 40 hours of work performed each week and time-and-a-half overtime pay for the remaining weekly work hours. After Mr. Atwater worked his shift on Saturday, December 21, 2019, he was temporarily laid off until the employer recalled him to the employment on Monday, January 6, 2020. Mr. Atwater established an original claim for unemployment insurance benefits that was effective December 22, 2019. Iowa Workforce Development set his weekly benefit amount at \$481.00.

Mr. Atwater made a weekly claim for the week that ended December 28, 2019 and for the week that ended January 4, 2020. Mr. Atwater then discontinued his unemployment insurance claim in connection with his recall to the employment.

When Mr. Atwater made his weekly claim report for the week that ended December 28, 2019, he reported \$392.00 in holiday pay and no other wages. Based on the reported holiday pay, Iowa Workforce Development approved and paid \$209.00 in benefits to Mr. Atwater for the week that ended December 28, 2019. The employer paid holiday pay of \$391.20 and no other wages to Mr. Atwater for the week that ended December 28, 2019. The holiday pay amount was the equivalent of 16 hours' wages.

When Mr. Atwater made his weekly claim report for the week that ended January 4, 2020, he reported \$196.00 in holiday pay and no other wages. Based on the reported holiday pay, Iowa Workforce Development approved and paid \$405.00 in benefits to Mr. Atwater for the week that ended January 4, 2020. The employer paid holiday pay of \$195.60 and no other wages to Mr. Atwater for the week that ended December 28, 2019. The holiday pay amount was the equivalent of eight hours' wages.

On December 26, 2019, Iowa Workforce Development sent an electronic notice of claim via the SIDES system to the employer, care of the employer's representative of record, Talx/Equifax, and provided January 6, 2020 as the deadline for the employer's timely protest/response. Talx/Equifax filed the employer's protest/response on January 4, 2020. Talx/Equifax reported \$391.20 as the amount of holiday pay the employer paid to Mr. Atwater for the week that ended December 28, 2019. Talx/Equifax also erroneously reported that another \$391.20 in wages were paid to Mr. Atwater after he filed his claim for benefits. Talx/Equifax erroneously reported \$586.80 as the amount of holiday pay the employer paid to Mr. Atwater for the week that ended January 4, 2020. Talx/Equifax had erroneously added the two weeks of holiday pay, \$391.20 + \$195.60, to reach the erroneous \$586.80 holiday pay amount. Based on the erroneous report from Talx/Equifax an Iowa Workforce Development Benefits Bureau deputy redetermined Mr. Atwater's unemployment insurance benefit eligibility and reached the erroneous conclusion that Mr. Atwater was not eligible for unemployment insurance benefits for the week that ended December 28, 2019 or for the week that ended January 4, 2020. The retermination prompted the overpayment decision that Mr. Atwater has appealed in a companion appeal.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code rule 871-24.16 provides as follows:

Vacation pay

24.16(1) If the employer properly notifies 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, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term "vacation pay" shall include paid time off and annual leave payments.

24.16(2) Rescinded IAB 12/18/19, effective 1/22/20.

24.16(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 during 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.

24.16(4) Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

Iowa Administrative Code rule 871—24.13 provides instructions for deducting various types of wages from unemployment insurance benefits, as follows:

Deductible and nondeductible payments.

24.13(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.

24.13(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 871—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.

Iowa Administrative Code rule 871-24.18 provides as follows:

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.

Mr. Atwater received holiday pay that was deductible from his unemployment insurance benefits for the weeks that ended December 28, 2019 and January 4, 2020, and was eligible for the benefits he received for those weeks provided he was otherwise eligible. Mr. Atwater received no regular wages, no vacation pay, no paid time off, no severance pay, and no separation pay for the weeks that ended December 28, 2019 and January 4, 2020. Mr. Atwater received

\$391.20 in holiday pay for the week that ended December 28, 2019 and \$195.60 in holiday pay for the week that ended January 4, 2020. Mr. Atwater appropriately reported the holiday pay when he made his weekly unemployment insurance claims for the weeks that ended December 28, 2019 and January 4, 2020. Mr. Atwater was eligible for the \$209.00 in unemployment insurance benefits that he received for the week that ended December 28, 2019, provided he was otherwise eligible. Mr. Atwater was eligible for the \$405.00 in benefits that he received for the week that ended January 4, 2020, provided he was otherwise eligible.

DECISION:

The January 28, 2020, reference 01, is modified as follows. The claimant received holiday pay for the weeks that ended December 28, 2019 and January 4, 2020 that was deductible from his unemployment insurance benefit eligibility. The claimant correctly reported the holiday pay to Iowa Workforce Development. The claimant did not receive regular wages, vacation pay, paid time off, severance pay or separation pay for the weeks that ended December 28, 2019 and January 4, 2020. The claimant was eligible for the \$209.00 in unemployment insurance benefits that he received for the week that ended December 28, 2019, provided he was otherwise eligible. The claimant was eligible for the \$405.00 in benefits that he received for the week that ended January 4, 2020, provided he was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn