

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELAINE L PRUETT

Claimant

APPEAL NO. 14A-UI-01570-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 01/05/14

Claimant: Appellant (4)

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 5, 2014, reference 02, that concluded she was denied benefits due to the receipt of vacation pay. A telephone hearing was held on March 4, 2014. The claimant participated in the hearing. Jennifer Wray participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant receive compensation deductible from her unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer from June 2012 through January 9, 2014. The employer provides paid time off (PTO) as benefit that combines traditional vacation and sick pay into one program.

The claimant filed a new claim for unemployment insurance benefits with an effective date January 5, 2014. Her weekly benefit amount was \$380.00. The claimant was paid \$410.00 in wages for the week ending January 11, 2014. She estimated her wages at \$375.00 and received a benefit payment of \$100.00.

On January 16, 2014, the employer issued a check to the claimant for 200 hours of unused PTO totaling \$2,911.00. After the claimant received the payment, she reported it during the week ending January 25 and received no benefits for that week.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer stated that the claimant received vacation pay of \$2,911.00 for 200 hours of unused PTO.

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 § 96.5-7.

The question is whether PTO should be treated as vacation pay under Iowa Code § 96.5-7. The problem is 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 are setting up a program that merges these two kinds of time off that the law says should be treated differently for unemployment purposes. To complicate things further, ordinary wages are not deducted dollar for dollar, but instead the wage deduction formula of Iowa Code § 96.3-3 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 exclusion 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, I conclude that if the legislature or agency want PTO deducted, they should say so expressly. See *Smith v. Iowa Employment Security Commission*, 212 NW 2d 471, 473 (Iowa 1973), *Brumley v. Iowa Dept. of Job Service*, 292 NW 2d 126, 129 (Iowa 1980).

The payment of unused PTO is not deductible from the benefits she received for the weeks ending January 11 and 18, 2014. The claimant should also have received full benefits for the week ending January 25.

The rules provide: "An individual may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings." 871 IAC 24.18. The claimant would not be eligible for benefits for the week ending January 11, 2014, due to having excessive earnings.

DECISION:

The unemployment insurance decision dated February 5, 2014, reference 02, is modified in favor of the claimant. The claimant was not eligible for benefits for the week ending January 11, due to excessive earnings. She is eligible for unemployment for weeks ending January 18 and 25, 2014.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css