

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY A MYERS**  
Claimant

**APPEAL 15A-UI-10332-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MILFORD ELECTRIC 11 INC**  
Employer

**OC: 07/12/15**  
**Claimant: Appellant (4)**

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Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 9, 2015, (reference 01) unemployment insurance decision that deducted vacation pay from benefits. After due notice was issued, a telephone conference hearing was held on September 29, 2015. Claimant participated. Employer participated through bookkeeper Lita Butler.

**ISSUES:**

Did the claimant receive vacation pay or PTO at separation?

Is that amount deductible from benefits, and if so, for what period?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on Tuesday, July 14, 2015. He received pay for 16 hours of work accumulated but unused vacation pay/paid time off (PTO) in the amount of \$171, equivalent to hours, based upon a rate of pay at \$19 per hour. The employer did designate the period of time to which the vacation pay was to be applied as one day. Claimant's weekly benefit amount (WBA) is \$431.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the vacation pay was not deducted for the correct period.

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 § 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 § 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 § 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.

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. Because the employer did a one-day time period to which the vacation pay is to apply the entire amount should be deducted from the first week of benefits following the separation, after deduction of wages. An individual may earn up to 25 percent of their WBA before the benefit payment is reduced. Earnings higher than 25 percent reduce the benefit payment. In this case:

\$431 WBA

25% of \$431 WBA = \$108 not deducted from WBA

Gross wages for the week \$304

\$304 gross wages - \$108 (25% of WBA) = \$196 deducted from WBA

\$431 WBA - \$196 partial wage deduction from WBA= \$235 partial benefit amount

Then vacation pay is deducted on a dollar-for-dollar basis.

\$235 partial benefit amount after wage deduction, less \$171 vacation pay, equals \$64.00 benefit amount for the week-ending July 18, 2015.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer’s account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$324 pursuant to Iowa Code § 96.3(7) as the claimant earned gross wages of \$304 and was paid vacation pay of \$171 for the one week-ending July 18, 2015. The representative’s decision calculation of a \$388 overpayment is incorrect.

**DECISION:**

The September 9, 2015, (reference 01) unemployment insurance decision is modified in favor of the appellant. The vacation pay and wages were incorrectly deducted. Claimant is not overpaid

\$388, but is entitled to partial benefits of \$64 after deduction of wages and vacation pay for the week-ending July 18, 2015. After offsetting the \$388 he was paid, he remains overpaid \$324.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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