

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**OLIVER L RUSSELL**  
Claimant

**APPEAL 17A-UI-03713-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINTERSET COMMUNITY SCHOOL DIST**  
Employer

**OC: 03/05/17  
Claimant: Respondent (3)**

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Iowa Code § 96.5(5) – Vacation and Severance Pay

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the March 31, 2017 (reference 03) unemployment insurance decision that found claimant was eligible to receive a reduced unemployment insurance benefit for week ending March 11, 2017 as long as he met all the other eligibility requirements due to receipt of vacation pay, wages in lieu of notice, severance pay, separation allowance, or dismissal pay, which are considered to be wages. The parties were properly notified of the hearing. A telephone hearing was held on April 21, 2017. The claimant, Oliver L. Russell, participated personally. The employer, Winterset Community School District, participated through witness Tammy Ellwanger. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Was vacation pay, wages in lieu of notice, severance pay, separation allowance, or dismissal pay properly deducted?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant did not receive any vacation pay, wages in lieu of notice, severance pay, separation allowance or dismissal pay when he was separated from employment with this employer. Claimant did receive gross wages in the amount of \$130.72 for his last week of employment. Claimant's last day worked was March 7, 2017.

According to the claimant's administrative records, he filed an initial claim for benefits with an effective date of March 5, 2017. However, claimant has not filed any weekly claims for benefits since opening his initial unemployment insurance benefits claim. No benefits have been paid to the claimant at this time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the following:

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Admin. Code r. 871-24.13(3)c provides:

(3) *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

While vacation pay, wages in lieu of notice, severance pay, separation allowance, or dismissal pay are deducted dollar for dollar from a claimant's weekly benefit amount, wages are not. Wages are only partially deducted pursuant to Iowa Admin. Code r. 871-24.18. See example below.

**PARTIALLY DEDUCTIBLE FROM THE BENEFIT PAYMENT BASED ON A FORMULA**

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.

Wages  
Holiday pay  
Stand-by pay  
Tips, gratuities, bonuses, commission and incentive pay

Example: A individual's WBA is \$400 and they earn \$370.

25% of \$400 is \$100.

\$100 is not deducted from the WBA.

$\$370 - \$100 = \$270$ .

The remaining \$270 is deducted from the WBA.

$\$400 - \$270 = \$130$ .

\$130 is the payment amount for the week.

However, claimant did not file any weekly claim for the week ending March 11, 2017 and was not paid any benefits for that one-week period. Because there were no benefits paid, there was no deduction made.

**DECISION:**

The March 31, 2017 (reference 03) unemployment insurance decision is modified in favor of the respondent. The claimant is eligible to receive benefits during the benefit week ending March 11, 2017 *as long as he meets all the other eligibility requirements*. The wages claimant earned for the benefit week ending March 11, 2017 are partially deductible from his weekly benefit amount as noted above.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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