

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SHANNON K BECTHOLD**  
Claimant

**APPEAL NO: 18A-UI-06916-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 03/18/18**  
**Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 14, 2018, reference 03, decision that determined her vacation pay was not correctly deducted. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 13, 2018. The claimant participated in the hearing. The employer sent an email indicating it did not wish to participate in the hearing.

**ISSUE:**

The issue is whether the claimant's vacation pay was correctly deducted.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was on a leave of absence and short-term disability before separating from the employer January 10, 2018. She exhausted her vacation pay prior to her separation and did not receive any vacation pay at or after her separation date.

The claimant's appeal file contained a Separation Agreement and General Release with her name handwritten in the margins on the front of the document with other notes clearly made by a Department employee. That agreement references Girls on the Run of Eastern Iowa as the employer. The claimant has never worked for or heard of that organization. The pay and vacation pay amounts listed in that release corresponded to the numbers erroneously attributed to the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 Admin. Code r. 871-24.16(3) provides:

(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 for 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.

The claimant testified she did not receive any vacation pay following her separation from this employer and the employer did not participate in the hearing and offer any testimony or evidence that the claimant received vacation pay. The claimant was on a leave of absence for several months before her separation and had exhausted all of her vacation prior to her separation.

The Separation Agreement and General Release contained in the claimant's file does not pertain to the claimant. She was never employed by Girls on the Run of Eastern Iowa and did not receive any pay or vacation pay following her separation from Wells Fargo Bank.

Because there is no evidence that the claimant received vacation pay the week ending April 6, 2018, the administrative law judge finds the vacation pay deducted from the claimant's unemployment benefits was done so in error. Therefore, vacation pay shall not be deducted for the week ending April 7, 2018.

**DECISION:**

The June 14, 2018, reference 03, decision is reversed. The claimant did not receive any vacation pay. Consequently, there shall be no deduction of vacation pay from the claimant's benefits for the week ending April 7, 2018.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn