

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALTON H YORK
Claimant

APPEAL NO: 06A-UI-08146-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/25/05 R: 02
Claimant: Appellant (3/R)**

Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Alton H. York (claimant) appealed a representative's August 3, 2006 decision (reference 02) that concluded the claimant was overpaid unemployment insurance benefits for the week ending July 15, 2006 due to receipt of vacation pay from Titan Tire Corporation (employer). After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 29, 2006 in conjunction with one related appeal, 06A-UI-08145-DT. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's vacation pay properly allocated and deducted and was there a resulting overpayment of unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 19, 1988. He works full time as a tire builder in the employer's factory. He normally works eight hours per day Monday through Friday on a first shift position. His hourly rate of pay in July 2006 was \$17.70. Paydays are weekly on Thursdays with pay current through the preceding Friday.

The employer had a factory shutdown from July 3 through July 10, 2006. Pursuant to the employer's collective bargaining agreement, the employer paid the claimant 40 hours of vacation in advance of the shutdown to cover at least a portion of the shutdown, in an amount of \$708.00 (gross). The claimant returned to work after the shutdown on July 11, 2006. He then received pay on July 13, 2006 for the prior week, which was only eight hours holiday pay for July 4, 2006 in an amount of \$141.60 (gross).

The claimant established an unemployment insurance benefit year effective December 25, 2005. His weekly benefit amount was calculated to be \$324.00. He filed an additional claim effective July 2, 2006. He filed a weekly claim for the week ending July 8, 2006 and reported receipt of vacation pay of "at least" \$400.00; he received no benefits for that week. He filed a weekly claim for the week ending July 15, 2006 and reported the receipt of the holiday pay for July 4 in the amount of \$142.00 (rounded). Since it was reported as holiday pay, which is treated the same as earned wages, the Agency applied the statutory formula for partial deduction of wages earned for determining the amount of partial unemployment insurance benefits to which the claimant was entitled, and he was issued a reduced benefit payment for that week in the amount of \$263.00. He reported no other wages for that week, despite the fact that he returned to work on July 11, 2006.

A notice of the claimant's additional claim was sent to the employer; the employer timely responded and reported the payment of \$708.00 of vacation pay, which it designated for the period "from date" July 3, 2006 and "thru date" July 10, 2006. It also reported the payment of holiday day pay "for date" July 4, 2006 in the amount of \$141.60. In the rendering of the related representative's decision also issued on August 3, 2006 (reference 02), which is the subject of the concurrently issued decision in 06A-UI-08145-DT, the representative made the assumption that the \$708.00 was applicable to all six week days from July 3 through July 10, then divided the \$708.00 by the six days, and therefore allocated \$118.00 for each day, five days to the week ending July 8 (totaling \$590.00) and one day to the week ending July 15, 2006, resulting in complete disqualification for benefits for the week ending July 8, 2006, and, after the one-to-one reduction for receipt of vacation pay, reduced eligibility in the amount of \$206.00 (\$324.00 – 118.00) for the week ending July 15, 2006. The representative decision being reviewed in this case that there was a resulting overpayment in the amount of \$57.00 (\$263.00 benefits paid - \$206.00 eligibility) is due to this same conclusion.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

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 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, 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 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" (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 section 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.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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 section 96.8, subsection 5.

The vacation pay was not properly allocated. The \$708.00 represented five work days between July 3 and July 10, not six days. The daily allocation should have been \$141.60 per day. Four days (totaling \$566.00 (rounded)) should have been allocated to the week ending July 8, 2006, together with the \$142.00 (rounded) which the claimant should have reported the week it was earned, not the week it was paid. Iowa Code § 96.3-3; 871 IAC 24.13(2)a. The total of vacation and holiday pay received which is attributable to the week ending July 8, 2006 is sufficiently in excess of the claimant's benefit eligibility that there is no remaining partial eligibility for that week.

However, the remaining fifth day of paid vacation should have been allocated to the week ending July 15, 2006 at the rate of \$142.00, rather than at the rate of \$118.00. Further, since the claimant reported the \$142.00 he received that week as holiday pay, rather than as vacation pay, only a portion of the proper deduction was made, rather than the one-to-one reduction that should have been made for vacation pay. Iowa Code § 96.3-3; Iowa Code § 96.5-7-b; 871 IAC 24.13(2)a. Therefore, the claimant's remaining eligibility for partial unemployment insurance benefits for the week ending July 15 is no more than \$182.00 (\$324.00 – \$142.00). Finally, it appears likely that the claimant actually earned wages for work performed during the time from July 11 through July 14 which was not reported as required for the week it was earned, rather than the week it was paid. Iowa Code § 96.3-3. Any such earnings would further reduce the claimant's eligibility for partial unemployment insurance benefits for the week ending July 15, 2006.

The matter will be remanded to the Claims Section for a determination whether the claimant actually had any wages earned for work performed during the week ending July 15, 2006. The Claims Section shall then make the necessary recalculation of the claimant's partial unemployment insurance benefit eligibility for that week after the one-to-one deduction of the \$142.00 in vacation pay and any pro-rated deduction for any actual wages earned, and shall further make any resulting overpayment adjustments.

DECISION:

The representative's August 3, 2006 decision (reference 02) is modified in favor of the employer. The vacation pay was not correctly allocated or deducted. Vacation pay should have been applied at the daily rate of \$142.00 per day; \$590.00 should have been applied to the week ending July 8, 2006, and \$142.00 should have been applied to the week ending July 15, 2006. After deduction of that amount from the claimant's weekly benefit eligibility, there may be remaining partial unemployment insurance benefits which the claimant was entitled to receive for that week, depending on whether the claimant also had wages earned for that week; however, at the least that eligibility will be less than the \$206.00 of partial eligibility previously determined; therefore, the amount of overpayment for the week ending July 15, 2006 is at least \$81.00 (\$263.00 partial benefits paid - \$182.00 maximum partial eligibility). The matter is

remanded to the Claims Section for any necessary recalculation of partial benefits payable to the claimant for that week in accordance with this decision.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs