

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL E JOSEPH
Claimant

APPEAL NO. 07A-UI-07571-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FINE EDUCATION RESEARCH FDTN
Employer

**OC: 07/01/07 R: 02
Claimant: Appellant (1)**

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 31, 2007, reference 02, that concluded she was ineligible to receive unemployment insurance benefits for the two weeks ending July 14, 2007, due to the receipt of vacation pay. A telephone hearing was held on August 22, 2007. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A and A-1 were admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible vacation pay?

FINDINGS OF FACT:

The claimant worked for the employer from January 1999 through June 30, 2007. Shortly before her last day of work, the claimant received severance pay and pay for unused vacation. The claimant received severance pay of \$9,290.51, which would amount to 520 hours or 65 workdays of severance pay. She also received \$1,169.72 for unused vacation pay, which would amount to 8 days of vacation pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 1, 2007. Her weekly benefit amount was \$347.00. 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 designated the period from July 2 through July 11, 2007, as the period to which the vacation pay was to apply, and July 12 through October 11, 2007, as the period to which the severance pay was to apply.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received vacation pay deductible from her unemployment insurance benefits.

Unused 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. Vacation pay if properly reported is considered a wage replacement, which reduces the amount of unemployment insurance benefits payable.

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable as July 2 through July 11, 2007. There is nothing unreasonable about this designation, and the claimant is, therefore, ineligible for unemployment insurance benefits through the week ending October 13, 2007.

The fact that the payment was made before the claimant's last day of work does not affect whether the payment was deductible under the law. It is an administrative law judge's duty to apply the law as written, not rewrite the law to achieve a desired outcome.

DECISION:

The unemployment insurance decision dated July 31, 2007, reference 02, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the two weeks ending July 14, 2007, due to the receipt of vacation pay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css