

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R RENSBERGER
Claimant

APPEAL NO. 11A-UI-01643-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSCO FOOD SERVICES OF IOWA INC
Employer

OC: 06/28/09
Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

James Rensberger filed a timely appeal from the February 8, 2011, reference 01, decision that denied benefits for the two-week period ending July 11, 2009 based on an Agency conclusion that the Mr. Rensberger had received vacation pay for those weeks that equaled or exceeded his weekly benefit amount. After due notice was issued, a hearing was held on March 11, 2011. Claimant participated. Dory Goodman, Vice President, represented the employer. Department Exhibit D-1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-01644-JTT.

ISSUES:

Whether the claimant received vacation pay that is deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Rensberger was employed by Sysco Food Services of Iowa, Inc., as a full-time Marketing Associate and last performed work for the employer on Friday, June 26, 2009. At the time Mr. Rensberger separated from the employment he had earned but not yet used two weeks of vacation benefit. The dollar value of the benefit was \$1,501.06. On July 10, 2009, the employer disbursed that amount to Mr. Rensberger to compensate him for the accrued vacation pay benefit.

Mr. Rensberger established a claim for unemployment insurance benefits that was effective June 28, 2009. The claim was only active for three weeks. For the week that ended July 4, 2009, Mr. Rensberger reported the entire amount of vacation pay and received no unemployment insurance benefits. For the week that ended July 11, 2009, Mr. Rensberger reported zero wages and received \$375.00 in regular benefits and \$25.00 in federal stimulus unemployment insurance benefits. For the week that ended July 18, 2009, Mr. Rensberger reported zero wages and received \$375.00 in regular benefits and \$25.00 in federal stimulus unemployment insurance benefits.

On July 2, 2009, Workforce Development mailed a notice of claim to the employer to alert the employer concerning Mr. Rensberger. The notice of claim imposed a July 13, 2009 deadline for the employer's protest of the claim and information concerning vacation pay, severance pay, or holiday pay disbursed in connection with the separation. On July 6, 2009, Dory Goodman, Vice President, completed the employer's information on the notice of claim. The employer did not protest the claim for benefits, but indicated a desire to have vacation pay factored into unemployment insurance benefit eligibility. In the space provided, the employer indicated that \$1,501.06 in vacation pay benefits had been disbursed in connection with the separation and that the employer wished to have these benefits applied to the period of Monday, June 29, 2009 through Friday, July 10, 2009. On July 6, 2009, the employer faxed the completed notice of claim. The Unemployment Insurance Service Center received the completed notice of claim on that day.

Using the information provided by the employer, a Workforce Development representative redetermined Mr. Rensberger's unemployment insurance benefit eligibility for the weeks ending July 4, 2009 and July 11, 2009. The Workforce Development representative apportioned half of the vacation pay (\$750.53) to each week. The apportioned vacation pay exceeded Mr. Rensberger's \$375.00 weekly regular unemployment insurance benefit amount and reduced his eligibility for benefits for each of the two weeks to zero. Because the Mr. Rensberger had received no unemployment insurance benefits for the week that ended July 4, 2009, the redetermination of benefits did not change his benefit eligibility for that week. Because Mr. Rensberger had received benefits for the week ending July 11, 2009, the redetermination prompted a decision that Mr. Rensberger had been overpaid benefits for the week ending July 11, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The evidence in the record establishes that the employer made a timely designation of the period to which Mr. Rensberger's vacation benefit pay was to be applied. The Agency correctly apportioned the vacation pay to the appropriate period designated by the employer. Based on the apportionment of vacation pay benefits, Mr. Rensberger was not eligible for benefits for the two-week period that included the week ending July 4, 2009 and the week ending July 11, 2009.

DECISION:

The Agency representative's February 8, 2011, reference 01, decision is affirmed. The claimant was not eligible for benefits for the two-week period ending July 11, 2009 because he received vacation pay for those two weeks that reduced his unemployment insurance benefit eligibility to zero.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css