

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGG G HENKEL

Claimant

APPEAL NO. 07A-UI-10274-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODRICH CORPORATION

Employer

**OC: 10/29/06 R: 12
Claimant: Appellant (2)**

Section 96.5-7 – Vacation and Holiday Pay

STATEMENT OF THE CASE:

Gregg G. Henkel (claimant) appealed a representative's November 5, 2007 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits for the two-week period ending October 27, 2007 due to the receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 26, 2007. This appeal was consolidated for hearing with two related appeals, 07A-UI-10273-DT and 07A-UI-10275-DT. The claimant participated in the hearing. Lee Murray appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision which reverses the representative's decision and allows benefits for the period ending October 27, 2007.

ISSUE:

Was the claimant's benefit eligibility properly reduced for vacation or holiday pay?

FINDINGS OF FACT:

The claimant started working for the employer on March 19, 2007. He worked full time as a machine engineer on a salary basis. His biweekly annualized pay was \$2,769.23, paid current on every other Friday. His last day of work was October 1, 2007. He was sent home after only a few hours that day, but was paid separation pay through the next payday, Friday, October 12, 2007, in the amount of \$2,769.23.

The claimant had established an unemployment insurance benefit year effective October 29, 2006. After his separation October 1, 2007, he filed an additional claim effective October 7, 2007. He made a weekly claim for the week ending October 13, 2007 for which he reported severance pay in excess of his eligibility and therefore he received no benefits for that week.

When the employer responded to the notice of the claimant's claim for unemployment insurance benefits, it responded by also including information that the claimant had received \$3,392.31 in vacation pay and \$830.77 in holiday pay. However, the employer misinterpreted the form and

did not understand the form was only seeking information on monies paid to the claimant to cover days after the last day worked. The claimant actually received no additional vacation pay or holiday pay attributable to any day on or after October 1, 2007.

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 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.

871 IAC 24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

871 IAC 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 had no vacation pay or holiday pay applicable to days on or after October 1, 2007, and therefore there should have been no deduction to his benefit eligibility for such. Benefits are allowed as of October 14, 2007.

DECISION:

The representative's November 5, 2007 decision (reference 05) is reversed. There was no vacation or holiday pay to be deducted from the claimant's eligibility. Benefits are allowed, provided the claimant is otherwise eligible, effective October 14, 2007.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css