

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN W HODGES
Claimant

APPEAL NO. 19A-UI-08672-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN ORDNANCE LLC
Employer

OC: 09/29/19
Claimant: Appellant (2R)

Iowa Code § 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated October 31, 2019, reference 02, that concluded claimant was ineligible for the one week ending October 5, 2019 for unemployment insurance benefits in the amount of \$412.00. A telephone hearing was scheduled and held on November 27, 2019 pursuant to due notice. Claimant did participate. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibit A was received into evidence.

ISSUE:

The issue is whether vacation pay was deducted for the correct period and amount from unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with employer was put on a one week break for the week of September 29, 2019 through October 5, 2019. Claimant was paid for 8 ½ hours of work that week, but was put on a temporary layoff for the other 4 days of the week. Claimant received 5 ½ hours of work and 3 hours of vacation pay for a total of 8 ½ hours for total pay for the week of \$177.84 based upon a rate of pay at \$22.23 per hour.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Because vacation pay was designated for three hours of the week in question, those three hours of vacation pay - in addition to the 5 ½ hours of work claimant participated on the layoff week – are to be deducted from the one week of benefits claimant is to receive for the layoff.

DECISION:

The October 31, 2019, reference 02, decision is reversed and remanded to the benefits bureau for recalculation of total hours worked for the week of September 29, 2019 through October 5, 2019. The vacation pay was not deducted for the correct period and should be seen as three hours of vacation and 5 ½ hours of actual work for the week at \$22.23 per hour.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn