

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL M GILBERT
Claimant

APPEAL NO. 10A-UI-16662-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 05/31/09
Claimant: Appellant (1)

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 2, 2010, reference 03, that concluded he was ineligible for benefits due to the receipt of vacation pay. A telephone hearing was held on January 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant receive deductible vacation pay and was it deducted correctly?

FINDINGS OF FACT:

The claimant worked for the employer from September 2007 through June 5, 2009. The claimant's rate of pay was \$19.95 per hour for 40 hours per week. When he separated from employment, he had 186 hours of unused vacation representing \$3,727.26 in pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 31, 2009. The employer responded to the notice of claim on June 16, 2009, within ten calendar days of the date that it was mailed to the employer. In its response, the employer estimated his vacation pay as \$3,012.74 and designated the period to which the vacation pay applied as June 6 through July 4, 2009.

On July 1, 2009, the employer issued a check to the claimant for \$3,727.26 to pay him for his 186 hours of unused vacation. The claimant received benefits for the period from June 7 through July 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable as June 6 through July 4, 2009. There is nothing unreasonable about this designation, and the claimant is, therefore, ineligible for unemployment insurance benefits through the week ending July 4, 2009. I recognize that the amount reported by the employer in its response to the notice of claim on June 16, 2009, actually underestimated the amount of the vacation pay by \$714.52, but the employer did not change its designation of the period to which the vacation pay applied until the time of the hearing, so I believe the original designation should govern.

DECISION:

The unemployment insurance decision dated December 2, 2010, reference 03, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the four weeks ending July 4, 2009, due to the receipt of vacation pay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs