

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT A WINGERTER
Claimant

APPEAL NO: 09A-UI-08874-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIGOTT INC
Employer

OC: 02/15/09
Claimant: Appellant (2/R)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Matt A. Wingerter (claimant) appealed a representative's June 12, 2009 decision (reference 02) that concluded the claimant was ineligible for benefits for the one week ending March 14, 2009 due to receipt of vacation pay from Pigott, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2009. This appeal was consolidated for hearing with two related appeals, 09A-UI-08873-DT and 09A-UI-08875-DT. The claimant participated in the hearing. Tina Mutchler 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.

ISSUE:

Was the claimant's vacation pay properly allocated and deducted?

FINDINGS OF FACT:

The claimant worked full time doing installation at an hourly rate of \$11.64 per hour. His regular work schedule was Monday through Friday, eight hours per day, 40 hours per week. His last day of work was February 5, 2009. When the claimant received his last paycheck on February 17, 2009, the check included payment for 52 hours of vacation; eight of these hours were hours the claimant had used that week prior to February 5, and 44 of the hours were his remaining "bank" of vacation hours upon separation. The claimant waited until after the end of the next regular workweek to establish his unemployment insurance benefit year effective February 15, 2009. He did, however, report the receipt of the entire amount during the first week of his unemployment insurance claim, the week ending February 21, 2009. The employer had designated the allocation of the payment to be for a one-week period beginning March 6 and ending March 12, after allocation of a four week "severance payment."

REASONING AND CONCLUSIONS OF LAW:

If vacation pay was or will be 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; the vacation pay paid or owed "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." Iowa Code § 96.5-7.

Iowa Code § 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 24.16(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.

As determined in the concurrently issued decision in appeal 09A-UI-08873-DT, the “severance payment” was not properly allocated to the period ending March 5, so the vacation payment would not follow allocation of the “severance payment” into March. Rather, it would go to the first week the claimant was unemployed, beginning February 6, 2009. The claimant did not claim benefits for the normal employer workweek immediately following his last day worked, so the vacation pay also is not allocatable to any week of eligibility. Therefore, he also should have been eligible for benefits for the first week of his claim ending February 21, 2009. The matter is remanded to the Claims Section for appropriate action on that week.

DECISION:

The representative’s June 12, 2009 decision (reference 02) is reversed. The vacation pay was not correctly deducted. Vacation pay at most applied only to the week ending February 14, 2009, for which the claimant did not make a claim. Benefits are allowed, provided the claimant is otherwise eligible, effective February 15, 2009. The matter is remanded to the Claims Section to address the matter of the claimant’s eligibility for benefits for the week ending February 21, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs