

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R WIER
Claimant

APPEAL NO. 07A-UI-10744-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/10/07 R: 04
Claimant: Appellant (4)

Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated November 8, 2007, reference 02, which concluded Timothy Wier was not eligible to receive job insurance benefits for the two weeks ending October 20, 2007 because of his receipt of vacation pay from Wal-Mart Stores, Inc. A telephone hearing was scheduled for 3:00 p.m. on December 5, 2007. The claimant, the appellant herein, did not respond to the notice of hearing until 3:38 p.m. He had not read the instructions for participation as noted on the hearing notice. Therefore, the administrative law judge declined to reopen the hearing record. Based on the appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer was notified of Mr. Wier's claim on October 11, 2007. On October 22, the employer reported that he received vacation pay in the gross amount of \$1,918.89 for the period ending October 13, 2007. When he filed his claim, Mr. Wier indicated his last day of work was October 8, 2007. He indicated in his letter of appeal that he did not receive vacation pay until after October 20, 2007. He was paid \$233.00 in job insurance benefits for the week ending October 13, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case should be modified. The employer timely designated Mr. Wier's vacation pay to the period ending October 13, 2007. Therefore, pursuant to 871 IAC 24.16(1), the vacation pay is deducted for the period designated by the employer. Furthermore, if the employer's indication that the payment was for the period ending October 13 was not considered a valid designation, the full amount of the payment would be deducted from the first week of unemployment. See 871 IAC 24.16(3).

The administrative law judge concludes that there is no basis on which to attribute Mr. Wier's vacation payment to any period after October 13, 2007. He contended in his letter of appeal that he did not receive the vacation pay until after October 20. However, that factor is immaterial. The law provides for a deduction based on vacation pay received or to be received. See Iowa Code section 96.5(7).

DECISION:

The unemployment insurance decision dated November 8, 2007, reference 02, is modified. Mr. Wier is ineligible to receive job insurance benefits for the one week ending October 13, 2007 because of his receipt of vacation pay from Wal-Mart Stores, Inc. Benefits are allowed thereafter, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs