

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DON A SHINN
Claimant

APPEAL NO. 15A-UI-03394-N-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/01/15
Claimant: Appellant (2R)

Section 96.5-7 – Vacation Pay Correctly Deducted
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 9, 2015, reference 01, which held the claimant had been overpaid unemployment insurance benefits in the amount of \$36.00 for one week between February 1, 2015 and February 7, 2015, because the claimant failed to report or incorrectly reported vacation pay from Wal-Mart Stores. After due notice was provided, a telephone hearing held on April 28, 2015. The claimant participated. Although duly notified, the employer did not respond to the notice of hearing. Claimant's Exhibit A was admitted into evidence. The administrative law judge takes official notice of the claimant's administrative file.

ISSUE:

At issue is whether the claimant's vacation pay has been correctly reported and deducted and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Don Shinn is currently employed by Wal-Mart Stores on a full-time basis and is paid \$18.65 per hour. Mr. Shinn opened an unemployment insurance claim with an effective date of February 1, 2015 and claimed unemployment insurance benefits for the period of February 3, 2015 through February 6, 2015 based upon his "layoff" for a period from Wal-Mart Stores.

It is the claimant's position that he received no pay, vacation pay or any other type of remuneration from Wal-Mart Stores for the period of February 1, 2015 through February 7, 2015. It is the claimant's further position that he took an additional week of work off from Wal-Mart Stores for the period of February 8, 2015 through February 14, 2015 and was paid vacation pay for that period only.

In support of the claimant's position, Mr. Shinn has offered an electronic print-out of a summary of pay, hours and the type of pay that he received for the two weeks in question and that that

document reflects vacation pay only for February 10, 11, 12 and 13, 2015 for ten hours each day. The print-out shows no pay provided to Mr. Shinn from Wal-Mart Stores for the period of February 1, 2015 through February 7, 2015. (See Claimant's Exhibit A).

A review of the claimant's administrative file shows that Wal-Mart Stores recorded that Mr. Shinn had received vacation pay in the amount of \$36.40 for the week ending February 7, 2015.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant received or was entitled to receive vacation pay for the period between February 1, 2015 and February 7, 2015. It does not.

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 § 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 § 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 § 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.

Iowa Admin. Code r. 871-24.16(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.

In the case at hand, the evidence in the record does not establish that Mr. Shinn received vacation pay in the amount of \$36.40 for one week between February 1, 2015 and February 7, 2015. Mr. Shinn participated in person and provided sworn testimony denying receiving any vacation from Wal-Mart Stores for that period and Claimant's Exhibit A, an electronic summary of pay from Wal-Mart Stores, does not reflect that Mr. Shinn received any disqualifying vacation pay for that period. The administrative law judge thus concludes that the evidence does not establish that the claimant received disqualifying compensation for the week in question and, therefore, has not been overpaid unemployment insurance benefits. The evidence in the record establishes that the claimant did receive vacation pay for the following week but did not claim unemployment insurance benefits.

Based upon Mr. Shinn's testimony in this matter, the administrative law judge concludes that there may be an issue regarding Mr. Shinn's eligibility to receive unemployment insurance benefits for the week between February 1, 2015 and February 7, 2015. The issue of whether the claimant became voluntarily unemployed by volunteering to be laid off for that week is remanded to the Claims Division for investigation and determination.

DECISION:

The representative's decision dated March 9, 2015, reference 01, is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$36.00 for one week between February 1, 2015 and February 7, 2015. The evidence does not establish that the claimant received or was entitled to receive vacation pay from Wal-Mart Stores for that period.

The issue of whether the claimant became voluntarily unemployed for that week is remanded to the Claims Division for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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