

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS O WHITE
Claimant

APPEAL NO. 15A-UI-03954-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/18/15
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay Correctly Deducted
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Douglas White filed an appeal from a representative's decision dated February 27, 2015, reference 01, which denied benefits for the week ending January 24, 2015 finding the claimant was receiving or entitled to receive vacation pay which equaled or exceeded his weekly benefit amount for that week. After due notice was provided, a telephone hearing was held on May 6, 2015. Claimant participated. The employer participated by Mr. Burt Izzard, Human Resource Manager. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issues in this matter are whether the appeal filed herein was timely and whether the claimant received disqualifying vacation pay for the week ending January 24, 2015.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: The disqualification decision was mailed to the claimant's last-known address of record on February 27, 2015. The claimant received the decision. The decision contained a warning that the appeal must be postmarked or received by the Appeals Section by March 6, 2015. The appeal was not filed until March 30, 2015 which is after the date noticed on the disqualification decision. The claimant's appeal in this matter was delayed because Mr. White attempted to resolve the issue himself by submitting additional documentation and conferring with an Iowa Workforce Development employee about the matter being resolved without going through the appeal process.

Because the claimant's intent was to dispute the adjudicator's findings and to provide evidence in support of his position, the administrative law judge concludes that the claimant's delay in filing his appeal may have been caused, in part, by mis-information given by an IWD employee that caused Mr. White to delay filing an appeal in this matter. The claimant is advised in the future to read and follow the information provided on each decision regarding appealing the decision and the timeframe during which the appeal must be filed.

Having reviewed all of the evidence in the record, the administrative law judge finds: Douglas White was off work from his employment with Wal-Mart Stores, Inc. for two weeks beginning January 13, 2015 and ending January 24, 2015. Mr. White was paid vacation pay for each day for the week ending January 17, 2015. The following week Mr. White was temporarily laid off from work from Wal-Mart Stores during the week ending January 24, 2015. Mr. White was not paid by Wal-Mart Stores for the period that he was laid off during the week ending January 24, 2015. Mr. White properly claimed and received unemployment insurance benefits for the week ending January 24, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 this matter it appears that Mr. White inadvertently may have provided information to Iowa Workforce Development that caused the agency to believe that he had received disqualifying vacation pay during the week ending January 24, 2015. The evidence in the record establishes the claimant received no vacation pay from Wal-Mart Stores, as he had been laid off from work for that week. The claimant received no vacation pay or other remuneration from Wal-Mart Stores from the week ending January 24, 2015. Claimant is eligible to receive unemployment insurance benefits for that week providing that he has met all other eligibility requirements of Iowa law.

DECISION:

The February 27, 2015, reference 01, decision is reversed. Claimant did not receive disqualifying vacation pay which equaled or exceeded his weekly benefit amount for the week ending January 24, 2015 and was eligible to receive unemployment insurance benefits, provided that he met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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