

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TREVOR J BULTEN**  
Claimant

**APPEAL NO. 14A-UI-01505-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA POWER COOP**  
Employer

**OC: 01/05/14**  
**Claimant: Appellant (4)**

Iowa Code section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Trevor Bulten filed a timely appeal from the February 4, 2014, reference 01, decision that denied benefits for the five-week period ending February 8, 2014 based on an agency conclusion that he had received or was entitled to receive vacation pay for the period in question that equaled or exceeded his weekly benefit amount. After due notice was issued, a hearing was held on March 3, 2014. Mr. Bulten participated. Vicki Vargason represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-01506-JTT. Department Exhibits D-1 through D-4 were received into evidence.

**ISSUES:**

Whether the claimant received vacation pay that is deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Trevor Bulten separated from employment with Central Iowa Power Coop effective Friday, December 27, 2013, and last performed work for the employer on that day. At the time Mr. Bulten separated from the employment he had accrued, but not yet used, 238.66 hours of vacation pay benefits with a gross dollar value of \$8,520.16. Mr. Bulten had also accrued, but not yet used, 12 hours of “safety pay” with a gross dollar value of \$428.40. The “safety pay” was a form of bonus paid to Mr. Bulten based on his record of performing work in a safe manner. On January 10, 2014, the employer issued payment to Mr. Bulten for the gross vacation pay amount and gross safety pay amount, minus appropriate payroll tax.

Mr. Bulten established a claim for unemployment insurance benefits that was effective January 5, 2014 and received benefits as follows:

Benefit week end date	Benefits paid
01/11/14	.00
01/18/14	501.00
01/25/14	501.00
02/01/14	.00
02/08/14	.00
02/15/14	501.00 (offset)
02/22/14	501.00 (offset)
03/01/14	501.00
03/08/14	381.00
03/08/14	120.00

Pursuant to Workforce Development instructions, Mr. Bulten reported vacation pay for the week that ended January 11, 2014 in an amount that equaled or exceeded \$999.00.

On January 9, 2014, Iowa Workforce Development mailed a notice of claim to Central Iowa Power Coop concerning Mr. Bulten's claim for benefits. The notice of claim provided a January 21, 2014 deadline for the employer's response. On January 15, 2014, Vick Vargason, Human Resources Administrator, completed the employer's information on the notice of claim form. The employer did not protest the claim. The employer provided vacation pay information. The employer indicated on the notice of claim form that at the time Mr. Bulten separated from the employment he had accrued, but not yet used, 250.66 hours of vacation pay benefits with a gross dollar value of \$8,948.56. The notice of claim form contained instructions as follows: "Failure to provide the time period to which the vacation pay applies shall result in the entire amount be applied to the 5 working days following the last day worked." The notice of claim form provided a space for employer remarks. The employer used some of that space to address other issues, but did not note on the form the period to which the reported vacation pay amount should be applied. The employer did not otherwise, as part of the response to the notice of claim, designate the period to which the vacation pay should be applied when determining Mr. Bulten's unemployment insurance benefit eligibility. The employer faxed the notice of claim form to Workforce Development on January 15, 2014 and the agency received the document that same day.

When Workforce Development received the employer's information regarding vacation pay, a Workforce Development representative used that information to redetermine Mr. Bulten's benefit eligibility. The Workforce Development representative divided the \$8,948.56 vacation pay amount by 250.66 hours to arrive at a \$35.70 hourly vacation pay amount. The Workforce Development representative then apportioned 40 hours of vacation pay (\$1,428.00) to the weeks ending January 4, 11, 18 and 25 and February 1 and 8, 2014. The Workforce Development representative apportioned the remaining amount of vacation pay, 10.66 hours (\$380.56) to the benefit week that ended February 15, 2014. Since the claim for unemployment insurance benefits was not effective until January 5, 2014, the apportionment of vacation pay to the week that ended January 4, 2014, had no effect on Mr. Bulten's claim. However, based on the apportionment of the vacation pay, the Workforce Development representative concluded that Mr. Bulten was not eligible for unemployment insurance benefits for the weeks that ended January 11, 18 and 25 and February 1 and 8, 2014. Because Mr. Bulten had previously received unemployment insurance benefits for the weeks that ended January 18 and 25, 2014, the Workforce Development representative concluded that Mr. Bulten had been overpaid benefits for those weeks and entered a February 4, 2014, reference 02, decision that Mr. Bulten

had been overpaid \$1,002.00 in unemployment insurance benefits for the two-week period of January 12, 2014 through January 25, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

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 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.

The evidence in the record establishes that the employer made a timely response to the notice of claim, but did not designate the period to which the vacation pay should be apportioned when determining Mr. Bulten's eligibility for unemployment insurance benefits. Accordingly, pursuant to the statute, the Workforce Development representative should have apportioned the entire vacation pay amount to the benefit week that ended January 11, 2014. Mr. Bulten received vacation pay for that week that exceeded his weekly benefit amount and, therefore, ineligible for unemployment insurance benefits for that week that ended January 11, 2014. Because the employer did not designate the period to which the vacation pay should be apply, the vacation pay is not deductible from unemployment insurance benefits for any other week.

**DECISION:**

The Agency representative's February 4, 2014, reference 01, decision is modified as follows. The claimant received vacation pay in connection the separation from the employment. The entire vacation pay amount was deductible from the claimant's benefit eligibility for the week that ended January 11, 2014. The vacation pay amount exceeded the claimant's weekly benefit amount for that week and the claimant was not eligible for unemployment insurance benefits for the week that ended January 11, 2014. The vacation pay was not deductible from any other week of the claimant's claim and the claimant would be eligible for benefits during the other weeks of his claim, provided he meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css