

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JEFFREY B LANG

Claimant,

and

KENDALL/HUNT PUBLISHING CO

Employer.

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HEARING NUMBER: 14B-UI-10173

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

The issue of timeliness was raised on appeal when the Claimant filed his appeal beyond the deadline. The Board finds good cause for the untimely appeal, and considers it as timely.

FINDINGS OF FACT:

Jeffrey Lang (Claimant) was separated from his employment with Kendall/Hunt Publishing Company (Employer) on May 31, 2014. He filed a claim for benefits with an effective date of Sunday, June 8, 2014. The notice of claim was mailed to the Employer on June 30, 2014 and the protest of this notice was due July 10, 2014. The Employer sent in a protest on July 8, 2014. In its protest the Employer reported vacation pay for 192.00 hours in the amount of \$3,260.00. The Employer did not designate in its protest the period to which the vacation period was to be allocated. Around September 2, the Employer then sent a corrected total number of vacation hours and amount of vacation pay after realizing the Claimant had used eight hours of vacation pay the week before his separation date. The Claimant actually received 184.00 hours of vacation in the amount of \$3,124.32.

The decision of the Department found the Claimant ineligible, based on the receipt of vacation pay, for the 4 weeks starting on Sunday, June 8, 2014 and ending on Saturday, July 5, 2014, inclusive. During this period of time the Claimant collected \$408 in weekly benefits for a total payout of \$1,632.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-7(a)-(d) 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.

....

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.

In implementing this statute, the regulations are even more specific on the designation requirement:

24.16(1) If the employer properly notifies 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**, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term “vacation pay” shall include paid time off and annual leave payments.

...

24.16(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 during 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.**

Since the Employer did not designate a “specific vacation period” to which the vacation period applies, we must apply the rule that “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...” 871 IAC 24.16(1). Here the last day of work was Saturday, May 31. The normal employer workweek immediately following the last day worked was the week running from June 1, 2014 through June 7, 2014. The Claimant filed for benefits after that week was over. Thus the last sentence of rule 24.16(3) governs and “the vacation pay shall not be deducted from any week of benefits.” 871 IAC 24.16(3).

While we understand that the protest form had changed, at least for a little while, the regulations and the statute remain the same. The requirement to designate a “specific vacation period” remains in force, and a listing of total dollars and total hours does not constitute a designation of a “specific vacation period.” Thus, regardless of how the form looks, we are required to apply the law and to allow the Claimant benefits for the weeks in question.

DECISION:

The administrative law judge’s decision dated October 28, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was **not** made ineligible for benefits due to vacation pay during the four weeks starting on Sunday, June 8, 2014 and ending on Saturday, July 5, 2014,

inclusive. Accordingly, the Claimant is allowed benefits during this period provided the Claimant is otherwise eligible. The overpayment entered against the Claimant is vacated and set aside in a separate decision issued today.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv