

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN T FOHT**  
Claimant

**JOHN DEERE CEC – DUBUQUE WORKS**  
Employer

**APPEAL 16A-UI-10259-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/15**  
**Claimant: Appellant (4)**

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Iowa Code § 96.6-2 – Timeliness of Appeal  
96.5(7) – Vacation pay  
871 IAC 24.2(1)g – Retroactive Benefits

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 1, 2016, (reference 02) unemployment insurance decision that deducted vacation pay from his unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2016. Claimant participated. Employer was to participate through Ryan Moode, but he did not answer the phone when called to begin the hearing. Department's exhibit D-1 was entered and received into the record. Claimant's exhibit A was entered and received into the record. Official notice was taken of agency records.

**ISSUES:**

Did the claimant file a timely appeal?

Did the claimant receive vacation pay for the week ending July 29, 2016 that is deductible from his unemployment insurance benefits?

Is the claimant eligible for one week of retroactive benefits (week ending August 6, 2016) on his claim with an effective date of July 31, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was laid off for two week period beginning on July 24, 2016 through August 6, 2016. Unfortunately, his claim with an effective date of August 2, 2015 expired in the middle of the two week period. This coupled with the fact that his employer used to provide all layoff information to the agency, led to the problems with his receipt of unemployment benefits for the period. The claimant did receive one week of vacation pay in the amount of \$929.00 for the week ending July 30, 2016. He did not report the vacation when he made is weekly claim for benefits for the week ending July 30, 2016. When the claimant attempted to make his second weekly claim, he was not allowed to do so and received a computer message to contact the agency. The claimant then contacted the agency on three different occasions for assistance. He was told

that his claim had expired but that his issue would be 'fixed.' During his second call to the agency to straighten out the issue he was again told that his issue would be fixed. He was never told that in order to remedy the situation he would need to file appeals to the decisions that were issued on September 1. The claimant relied on the agency employees telling him the situation would be fixed. When the claimant called a third time for assistance, he was told that he would need to appeal as that was the only way to fix his issue. The claimant filed an appeal immediately thereafter on September 21, 2016.

Agency records show the claimant made a weekly continuing claim for the week ending August 6, 2016, the first week on his new claim. He was not paid any vacation pay for that week of the layoff and earned no wages.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant repeatedly sought assistance from the agency and was told he needed to do nothing to get the issue fixed. He relied on that information and did not appeal until he was finally told on his third call that his issue could not be fixed unless he filed an appeal. The misinformation given by the agency employees is good cause reason for claimant having filed a late appeal. His appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the vacation pay was 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.

The claimant was on a two week layoff, but was paid vacation pay for the first week in the gross amount of \$929.00. That entire vacation payment should be deducted from his unemployment insurance benefits for the week ending July 30, 2016.

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits is granted.

Iowa Admin. Code r. 871-24.2(1)g provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

Agency records make clear that claimant did file a continuing claim for the week ending August 6, 2016. Claimant is entitled to unemployment insurance benefits for the week ending August 6, 2016, less of course any overpayment he may have received. Retroactive benefits are granted for the one week ending August 6, 2016 on his claim with an effective date of July 31, 2016.

**DECISION:**

The September 1, 2016, (reference 02) decision is modified in favor of the appellant. The claimant did file a timely appeal. The vacation pay was correctly deducted from his unemployment insurance benefits. The claimant's request for retroactive benefits for the one week ending August 6, 2016 is granted.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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