

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS F REED**  
Claimant

**APPEAL NO. 09A-UI-08723-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INLAND TRUCK PARTS CO**  
Employer

**OC: 02/15/09**  
**Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay Deduction for Correct Period  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Dennis Reed filed an appeal from a representative's decision dated June 5, 2009, reference 01, which held him not eligible to receive unemployment insurance benefits for the two-week period ending February 28, 2009 as the claimant was receiving or was entitled to receive vacation pay which equaled or exceeded his weekly benefit amount. A hearing was scheduled for and held via telephone on July 6, 2009 in conjunction with appeals 09A-UI-08724-NT and 09A-UI-08725-NT. Mr. Reed participated personally. The employer participated by Kara Specht, Payroll Administrator. Exhibit One was received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant's appeal was timely and whether vacation pay was deducted for the correct period.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant has established good cause for a late filing of this appeal. The claimant was separated on February 16, 2009. He received vacation pay in the amount of \$1,056.00. The employer did designate the period of time to which the vacation pay was to be applied. As the claimant's separation took place on Monday, February 16, 2009, 32 hours of disqualifying compensation were applied to the week ending February 21, 2009 and 40 hours to the week ending February 28, 2009. The remaining 8 hours of the 80 hours of vacation pay were applied to the following week ending March 7, 2009.

Mr. Reed had also received severance pay from the company in the amount of \$1,056.00 and the employer did designate the period of time to which the severance pay was to be applied. The agency thus applied 32 hours to the week ending March 7, 2009, 40 hours of severance pay were applied to the week ending March 14, 2009 and the remaining 8 hours of the 80 hours of specified severance pay designated by the employer as to be applied for 80 hours were applied to the week ending March 21, 2009.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the vacation pay was deducted for the correct period.

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.

871 IAC 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.

Because the employer did designate an 80-hour period to which the vacation pay is to apply, and the claimant's separation date of February 16, 2009, the vacation pay was correctly deducted during the first week of benefits and subsequent weeks.

**DECISION:**

The June 5, 2009, reference 01, decision is affirmed. The vacation pay was deducted for the correct period.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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