

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L HUMES
Claimant

APPEAL NO. 11A-UI-03035-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROQUETTE AMERICA INC
Employer

OC: 09/26/10
Claimant: Appellant (1)

Iowa Code § 96.5(7) – Vacation/Holiday Pay
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 1, 2011 (reference 02) decision that deducted vacation pay from benefits without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a telephone conference hearing was held on April 1, 2011. Claimant participated. Employer participated through Hilary Carter.

ISSUE:

The issue is whether claimant received vacation pay at separation, if that amount is deductible from benefits, and if so, for what period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated due to a lockout on September 28, 2010, and received holiday pay for Veterans Day holiday pay in the amount of \$179.92 for the week ending November 13, 2010, equivalent to eight hours, based upon a rate of pay at \$22.49 per hour. He received the same for Thanksgiving Day for the week ending November 27, 2010. He did not report the pay until the two weeks ending January 1, 2011 when he reported eight hours of vacation pay for each day on December 20, 21, 22, 23, 27, and 28, 2010. He reported eight hours of floating holiday (vacation) pay for December 29, 2010. He received eight hours of holiday pay for each day on December 24, 25, and 31, 2010 and January 1, 2011. He received no UI benefits for the two weeks ending January 1, 2011 but was paid the full weekly benefit amount for the weeks ending November 13 and 27, 2010. Claimant's weekly benefit amount (WBA) is \$376.00.

REASONING AND CONCLUSIONS OF LAW:

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.

The general policy underlying the deductibility of “vacation pay” from benefit eligibility is “that even though one is unemployed during certain weeks, he or she is not entitled to unemployment benefits for weeks if receiving or having received vacation pay therefor.” *Lefebure Corp. v. Iowa Dept. of Job Service*, 341 N.W.2d 768, 771 (Iowa 1983); see also, 14 A.L.R.4th 1175 §2(a) (1982). Thus, “vacation pay” is deductible because it is considered a form of “wage,” which the statute further defines as any “remuneration for personal services . . .” Iowa Code § 96.19(41). The purpose behind all the deductible payment provisions of the unemployment law is to prevent claimants from receiving benefits for any week or portion thereof in which they are also receiving a wage substitute payment from their employer. The deduction from benefits for the two weeks ending January 1, 2011 was correct even when not including the two days’ holiday pay from November 2010.

The eight hours’ holiday pay for each of the weeks ending November 13 and 27, 2010 are deducted as follows:

Gross holiday pay \$179 – (25% of \$376 WBA = \$94) = \$85 deduction from WBA
\$376 - \$85 = \$291 partial weekly benefit amount
\$376 WBA paid - \$291 partial benefits due = \$85 overpayment for the week
\$85 x two weeks ending November 13 and 27, 2010 = total overpayment \$170.

DECISION:

The March 1, 2011 (reference 02) decision is affirmed. The holiday and vacation pay was deducted for the correct periods. The overpayment amount of \$170.00 is correct.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs