

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES MILNE**  
Claimant

**APPEAL NO. 09A-UI-15426-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BAKER COMMUNICATIONS INC**  
Employer

**Original Claim: 03/22/09  
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant appealed a representative's October 6, 2009 decision (reference 01) that concluded he was not eligible to receive benefits for the weeks ending March 28 through April 11, 2009, because he received vacation pay from the employer that should be attributed to these weeks. A telephone hearing was held on November 16, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant receive vacation pay that should be attributed to the weeks ending March 28 through April 11, 2009?

**FINDINGS OF FACT:**

When the claimant worked for the employer he worked 40 hours a week. His last day of work was February 26, 2009. He established a claim for benefits during the week of March 22, 2009.

The claimant received three weeks of vacation pay and a bonus payment he had earned in 2008. Before the claimant could receive four weeks of additional pay or "severance pay," the employer required him to sign a Severance and Release Agreement. If the claimant did not sign the form, he would still receive his vacation and bonus pay, but not an additional four weeks of pay. The claimant signed the agreement. (Claimant Exhibit A).

**REASONING AND CONCLUSIONS OF LAW:**

The bonus the claimant received is not deductible from his benefits. 871 IAC 24.13.(4)(b). Severance pay must be deducted from a claimant's maximum weekly benefit amount. Iowa Code § 96.5-5. A payment after a separation that is conditioned upon execution of a release or waiver of claims is not "severance pay" as contemplated by Iowa Code § 96.5-5. It is more aptly characterized as consideration given by the employer to the claimant for waiver of

possible causes of action against the employer and not simply a payment for prior years of service to the employer. At the hearing, Claimant Exhibit A shows that the additional four weeks of payment the claimant received was in exchange for the claimant's signing the release. Thus, it cannot be considered severance pay that is deductible from the claimant's unemployment insurance benefits. This means that even if the employer designated weeks in which this payment should be attributed to, this designation cannot be recognized, because no deduction can be made for a settlement payment.

When an employer makes a vacation payment or becomes obligated to make a payment, the vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. Iowa Code § 96.5-7, 871 IAC 24.16.

The record indicates the employer designated the "settlement payment" to the weeks ending February 27 through March 26 and the vacation to March 27 through April 11, 2009. Since the settlement payment cannot be deducted, the three weeks of vacation pay will be substituted for the "settlement payment." This means the claimant is not eligible to receive benefits for the weeks ending February 28, through March 21, 2009. As of March 22, 2009, the claimant is eligible to receive benefits and no deduction for vacation, bonus, or severance payments shall be made from his benefits subsequent to this date.

**DECISION:**

The representative's October 6, 2009 decision (reference 01) is reversed. The severance payment the employer attributed to four weeks cannot be implemented because the claimant did not receive a severance payment. Instead, he received a settlement payment that is not deducted from his benefits. The claimant's vacation pay is attributed to the weeks ending February 28 through March 21, 2009. This means as of March 22, 2009, the claimant is eligible to receive his maximum weekly benefit amount and no vacation, bonus, or severance payments shall be deducted from any subsequent weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw