

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK L VER HELST
Claimant

APPEAL NO: 07A-UI-00978-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUNG MENS CHRISTIAN ASSN
Employer

**OC: 12/31/06 R: 02
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Jack L. Ver Helst (claimant) appealed a representative's January 26, 2007 decision (reference 01) that concluded the claimant was ineligible for benefits for the two weeks ending January 20, 2007 due to receipt of vacation pay received from Young Men's Christian Association (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2007. The claimant participated in the hearing. Tami Ruppel appeared on the employer's behalf. During the hearing, Exhibits A-1, A-2, Claimant's A and Claimant's B were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's vacation pay properly allocated and deducted?

FINDINGS OF FACT:

The claimant started working for the employer on September 1, 2005 with seniority credit given for employment with another employer. He worked full time as aquatics program director on a salary basis, being paid \$1,350.00 each two weeks. His last day physically worked was August 18, 2006; a separation occurred as of that day. Pursuant to agreement reached on or by August 18 with the employer, he received his regular paychecks as severance pay through the pay period ending December 23, with his last paycheck issued on December 29, 2006. Accordingly, the claimant received his regular paycheck on August 25 for the pay period from August 6 through August 19, 2006. He received his next paycheck as scheduled on September 8, covering the pay period from August 20 through September 2, 2006. In addition, however, on August 31 the employer issued an extra paycheck in the gross amount of \$1,358.84. In contrast to the regular paychecks, which bore the designation of "salary" as the earnings description, this check bore the designation "taxable adj," and the amount represented the claimant's unused vacation balance as of August 18.

Upon the expiration of his severance pay payments, the claimant established an unemployment insurance benefit year effective December 31, 2006. A notice of his claim was sent to the

employer, to which the employer made a timely response. In that response the employer marked that the claimant had received severance pay from August 20 through December 31, 2006 and that he had received vacation pay for 80.5 hours paid out on August 31, 2006 in the gross amount of \$1,358.84. The employer did not designate on the form the period to which it was applying the vacation. When the Agency representative reviewed this information, the representative attributed the vacation pay to the two-week period beginning December 31, 2006 and ending January 20, 2007.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay was received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility.

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.

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.

First, the employer did not designate the period to which it believed the vacation should be applied; therefore, under the rule at worst the vacation would have all been applied to the week ending August 26, 2006. However, more critically, the claimant did not file a claim for unemployment insurance benefits until substantially after his last day worked. Even extending the "last day worked" to be the last day of the pay period for which he was paid severance pay, that was December 23, 2006, and he did not file for benefits for the following week, so that under the first portion of the rule the vacation pay would all have been applicable to the week ending December 30, 2006, and further, to the same effect, under the second portion of the rule the entire amount of the vacation pay would not be deducted from any week of benefits. Benefits are allowed as of December 31, 2006, provided the claimant is otherwise eligible.

DECISION:

The representative's January 26, 2007 decision (reference 01) is reversed. The vacation pay was not correctly deducted. Vacation pay did not apply to any week after December 31, 2006. Benefits are allowed, provided the claimant is otherwise eligible, effective December 31, 2006.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs