

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GARY D HEUTON

Claimant

APPEAL NO: 14A-UI-10191-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PENGO CORPORATION

Employer

OC: 06/22/14

Claimant: Appellant (2)

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 25, 2014, reference 01, that concluded he was ineligible to receive unemployment insurance benefits for the four weeks ending July 19, 2014, due to the receipt of vacation pay. A telephone hearing was held on October 21, 2014. The claimant participated in the hearing with a witness, Traci Heuton. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible vacation pay and was it properly deducted?

FINDINGS OF FACT:

The claimant last worked for the employer June 25, 2014. The claimant worked full time for the employer at a rate of pay of \$31.51 per hour.

After his separation from employment, the claimant received payment of \$4,544.38 for 144.22 hours of unused vacation pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 22, 2014. His weekly benefit amount was \$424.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer reported the payment of \$4,544.38 for 144.22 hours of unused vacation pay. The notice of claim form contained instructions as follows: "Failure to provide the time period to which the vacation pay applies shall result in the entire amount being applied to the five working days following the last day worked." The notice of claim form provided a space for employer remarks. The employer did not note anywhere on the form the vacation period to which the vacation pay amount should be applied.

The claimant initially reported his wages and an estimate of unused vacation pay on his claim for the week ending June 28, 2014, since he had not received the payment yet. As a result, he did not receive benefits for that week.

When the claimant received the vacation paycheck, he noted that the amount was more than what he had reported and it could not be adjusted online. He contacted a department representative and reported the correct amount of vacation pay. The department representative assured the claimant that she could correct the amount on her end. She then represented that the matter was "fixed" and the claimant was "good to go." For the week ending July 5, \$756 (24 hours x \$31.51) in vacation pay was reported. As a result, the claimant did not receive benefits.

The claimant received \$424 per week in benefits for the weeks ending July 12, July 19, and July 26, 2014.

In applying the vacation pay in this case, the Agency applied 16 hours (\$503.81) of vacation pay to the week ending June 28, 40 hours (\$1,259.53) per week to the weeks ending July 5, 12 and 19, and the remaining 8.22 hours (\$262.00) to the week ending July 26.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received vacation pay deductible from his unemployment insurance benefits.

Under the unemployment insurance law, a person is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has vacation pay of over his weekly benefit amount attributable to the same week. Iowa Code § 96.5-7. Employers are permitted to designate the vacation period to which the vacation pay is to be applied if the designation is made within ten calendar day after the employer receives notice of the filing of the claim. Iowa Code § 96.5-7-b ; 871 IAC 24.16(1). The statute and rules provided that if the employer does not designate the vacation period, the vacation pay will not be deducted for more than one week. Iowa Code § 96.5-7-d ; 871 IAC 24.16(3). The rules direct that if the specific vacation period is not designated, the entire amount of vacation pay will be applied to the one-week period starting with the day after the last day of work. 871 IAC 24.16(3). In addition, the rules provide that claimants are to be instructed to report vacation pay applicable to the first week and that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits. 871 IAC 24.17(1)d.

The evidence in the record establishes that the employer made a timely response to the notice of claim but did not designate the specific vacation period to which the vacation pay should be allocated. According to the statute and rule, the Agency should have applied the entire vacation pay amount to the five workdays starting June 26. As a result, the claimant was ineligible for benefits for the weeks ending June 28 and July 5, because the payments would exceed his weekly benefit amount for each week. In addition, the claimant requested assistance from a department representative in reporting his vacation pay. He was not instructed that vacation pay designated by the employer in excess of one week would result in an overpayment of benefits.

The claimant was eligible for benefits effective July 6, 2014, provided he is otherwise qualified.

DECISION:

The unemployment insurance decision dated September 25, 2014, reference 01, is reversed. The claimant is ineligible to receive unemployment insurance benefits for the weeks ending June 28 and July 5, 2014, due to the receipt of vacation pay but is eligible for benefits effective July 6, 2014, provided he is otherwise qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs