

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUSSELL J JOHNSON**  
Claimant

**APPEAL NO: 08A-UI-01205-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUXLAND CONCRETE**  
Employer

**OC: 12/30/07 R: 01  
Claimant: Appellant (4)**

Section 96.3-7 - Recovery of Overpayment of Benefits  
Section 96.5-7 – Holiday and Vacation Pay

**STATEMENT OF THE CASE:**

Russell J. Johnson (claimant) appealed a representative's February 1, 2008 decision (reference 02) that concluded the claimant was overpaid unemployment insurance benefits for the week ending January 5, 2008 due to receipt of holiday and vacation pay. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on February 19, 2008. On February 18 in reviewing the file in preparation for the hearing, the administrative law judge observed that the employer had not been included on the notice of hearing as they should have been, and so contacted the claimant regarding the potential rescheduling of the hearing. As a result of that discussion the claimant indicated that the employer was supportive of the claimant's position in his appeal. Therefore, with the claimant's consent the administrative law judge contacted Jerry Koch, the employer's office manager. Mr. Koch agreed that he had made some errors in completing information on the employer's response to the notice of the claimant's claim which had led to the overpayment decision, and informally provided information to correct the erroneous information. Understanding that consideration of his information would likely result in a substantial reduction in the amount of benefits the claimant had been deemed to be overpaid, Mr. Koch consented that the administrative law judge could proceed to informally make such a decision and waived notice of hearing on the issue. Understanding that based upon Mr. Koch's informally provided information it appeared that the amount of the overpayment would be substantially but not entirely reduced, the claimant concurred that the administrative law judge should make a decision to that effect upon the available information. Based on a review of the information in the administrative file, Mr. Koch's informally provided information, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant receive holiday or vacation pay and if so was it properly allocated and deducted? Was the claimant overpaid unemployment insurance benefits for the week ending January 5, 2008?

**FINDINGS OF FACT:**

The claimant works full time as a seasonal concrete driver. His normal work schedule is eight hours per day, Monday through Friday.

The claimant established an unemployment insurance benefit year effective December 30, 2007. His weekly benefit amount was calculated to be \$360.00. The claimant filed a weekly claim for the week ending January 5, 2008 in which he reported wages of \$150.00. As a result, he received a reduced benefit amount for that week of \$300.00.

The employer was not open and had no work available for the claimant on Monday, December 31. Tuesday, January 1, was a holiday for which the employer paid the claimant 8.0 hours of holiday pay at the claimant's then hourly rate of \$15.84, for a total of \$126.72. On Wednesday, January 2, the claimant came in and worked for two hours, for a total wage of \$31.68. He was then laid off for the rest of the week. When he made his weekly claim, he reported the \$150.00 as his estimation of his total pay for the week, including both the holiday pay and the hourly pay. The gross wages actually paid for both the hourly pay and the holiday pay for the week ending was \$158.40, which would be rounded to \$158.00.

The employer was sent a notice of the claimant's filing for unemployment insurance benefits, and on January 9 submitted its response. However, on the form the employer noted \$126.72 under the caption of "vacation pay" with the notation it was for a safety day, and indicated the date as for January 2, 2008. This was incorrect; the safety day was on a prior week, and the claimant was paid for no vacation time during the week ending January 5.

When the Agency claims representative received the employer's response, the representative treated the \$150.00 reported by the claimant on his weekly claim as straight wages earned for the week, then additionally added in the \$126.72 of holiday pay reported by the employer which the claimant had included in his wage report, and also added another \$126.72 for the "vacation pay" incorrectly reported by the employer. As a result, the claims representative concluded that the claimant had received total pay for the week of \$404.00 (rounded), so that he was not entitled to any partial benefits for that week, and as a consequence concluded that the claimant was overpaid the \$300.00 in benefits which had been paid.

**REASONING AND CONCLUSIONS OF LAW:**

If holiday or 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 24.13(2)a provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

The claimant received no vacation pay for the week ending January 5, 2008, so that deduction was in error. The claimant did receive \$126.72 in holiday pay for that week, but it was a portion of the wages reported by the claimant for that week, not in addition to that pay.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

This is same formula is also set out as rule 871 IAC 24.18. Under this formula, after deduction for the total gross wages including the holiday pay actually paid for the week ending January 5, 2008, the claimant's remaining eligibility is \$292.00 ( $\$360.00 - (\$158.00 - (\$360.00 \div 4 = \$90.00))$ ) Therefore, his overpayment for the week ending January 5, 2008 was not \$300.00, but rather was \$8.00.

**DECISION:**

The representative's February 1, 2008 decision (reference 02) is modified in favor of the claimant. The holiday and vacation pay were not correctly deducted for the week ending January 5, 2008. The claimant was entitled to partial benefits for that week in the amount of \$292.00; his benefit overpayment for that week is therefore reduced to \$8.00.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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