

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEO W LENANE

Claimant

APPEAL NO. 09A-UI-11340-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC

Employer

Original Claim: 03/15/09

Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Leo W. Lenane (claimant) appealed a representative's July 28, 2009 decision (reference 01) that concluded the claimant was ineligible for benefits for the three weeks ending April 4, 2009 due to receipt of vacation pay from Uniparts Olsen, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2009. This appeal was consolidated for hearing with one related appeal, 09A-UI-11340-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 was entered into 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:

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

FINDINGS OF FACT:

The claimant worked full-time as a fork truck driver/warehouseman on a 6:00 a.m.-to-2:00 p.m., Monday-through-Friday schedule. His hourly rate of pay was \$14.80. When he reported in on March 13, 2009, he was informed he was indefinitely laid off at that time. He was then given a check for his accrued 120 hours of vacation in a gross amount of \$1,776.00.

The claimant established an unemployment insurance benefit year effective March 15, 2009. His weekly benefit amount was calculated to be \$361.00. On March 17 the Agency sent the employer a notice of the filing of the claimant's claim; on March 19 the employer responded by submitting a report to the Agency indicating that upon separation the claimant had been paid \$1,776.00 in vacation pay, which the employer allocated to the period from March 16 through April 3, which is the benefit week ending April 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay was or will be 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; the vacation pay paid or owed "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." Iowa Code § 96.5-7. If the vacation time would normally cover more than one week and the employer wishes to have the vacation pay distributed evenly throughout the period to which the vacation pay could be allocated, it must make a timely report to the Agency making that designation. 871 IAC 24.16(3).

Upon separation, the claimant was paid accrued vacation pay for 120 hours, which the employer chose to correctly allocate to the three week period ending April 4. As the claimant's weekly vacation pay allocation (\$592.00) exceeded his weekly benefit amount (\$361.00), he had no remaining eligibility for unemployment insurance benefits for those three weeks.

DECISION:

The representative's July 28, 2009 decision (reference 01) is affirmed. The vacation pay was correctly allocated and deducted. Vacation pay applied to the three-week period ending April 4, 2009. Benefits are allowed, provided the claimant is otherwise eligible, effective April 5, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw