

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A HENDLEY
Claimant

APPEAL NO. 08A-UI-10115-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON HOFFMANN CORPORATION
Employer

OC: 09/16/07 R: 12
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Timothy A. Hendley (claimant) appealed a representative's October 22, 2008 decision (reference 01) that concluded the claimant was ineligible for benefits for the week ending August 16, 2008 due to receipt of vacation pay from Von Hoffman Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-10116-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 started working for the employer in August 1999. He works full time as a pressman at the employer's Eldridge, Iowa location, now known as R.R. Donnelly. His regular work schedule is Thursday, Friday, and Saturday from 4:00 a.m. to 4:00 p.m.

The claimant established an unemployment insurance benefit year effective September 16, 2007 due to a short-term layoff due to lack of work. He filed an additional claim effective August 10, 2008 due to another short-term layoff for lack of work. His last day of work prior to the layoff was August 2. He took vacation for his otherwise scheduled work on August 7, August 8, and August 9. The first day he was off work due to the August 2008 layoff was August 14. He returned to work August 28.

When the claimant reopened his unemployment insurance claim effective August 10, a new notice of his claim was sent to the employer's third party representative. On August 26 the third party representative responded with a statement that "the claimant received the following pay

after the last day worked: vacation pay: . . . \$786.26 for the period ending 08/09/08.” The Claims representative assumed the employer’s representative meant this to be applied to the first week the claimant was off work, and so issued the decision disqualifying the claimant for benefits for the week ending August 16.

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.

The vacation pay received by the claimant was attributable to the days of vacation he had taken on August 7, August 8, and August 9, not to any of the days he would have worked but for the layoff the week of August 10, when he reopened his claim. No vacation pay should have been allocated to the weeks of layoff in August 2008.

DECISION:

The representative’s October 22, 2008 decision (reference 01) is reversed. The vacation pay was not correctly deducted. The vacation pay did not apply to any week in August 2008 during which the claimant was laid off. Benefits are allowed, provided the claimant is otherwise eligible, effective August 10, 2008.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css