

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DENNIS J BANKS
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GMT CORPORATION
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Appeal Number: 05A-UI-03675-DT
OC: 03/06/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Dennis J. Banks (claimant) appealed a representative's April 4, 2005 decision (reference 02) that concluded the claimant was ineligible for benefits for the three weeks ending March 26, 2005, due to receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-03676-DT. The claimant participated in the hearing. Kendall Kelly appeared on the employer's behalf. During the hearing, Exhibit A-1 was 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.

FINDINGS OF FACT:

The claimant started working for the employer on March 4, 1996. He worked full time as a machine operator in the employer's contract machining operation. His normal work schedule was first shift, eight hours per day, Monday through Friday. His last day of work was March 3, 2005. He was discharged on March 8, 2005.

The employer's vacation policy is somewhat unique, in that on an employee's service anniversary date, they are paid "vacation pay" that is calculated based on a formula of so many weeks depending on the number of years of service multiplied by 2 percent of the employee's prior service year's gross income. In the claimant's case, his anniversary date was March 3, and he had sufficient years of service that he was entitled to vacation pay equaling 6 percent of his last year's gross income, in his case \$3,015.48. Under the employer's vacation policy, this was attributable to 120 hours. Because the vacation payment was based upon the percentage of the claimant's last year's gross income and the claimant had worked a great many overtime hours from March 4, 2004 through March 3, 2005, there is no actual correlation to the claimant's hourly wage of \$15.31 per hour.

The employer's vacation pay policy provides that the vacation pay is paid to the employee automatically on the anniversary date, and the claimant was automatically paid on March 3, 2005. The employer's policy does not require the employee to actually utilize the paid vacation, so if the employee does not take time off and continues to work, they are paid for the time they actually work. If the employee does take some time off during the year, they are not paid any separate vacation pay at that time, but would theoretically utilize the vacation pay they received on their anniversary date. The claimant in the past did not usually take off the number of weeks he would be allowed.

The claimant's vacation payout was not connected at all to the timing of his separation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether vacation pay was properly deducted.

Iowa Code Section 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.

This is an unusual situation, but the administrative law judge concludes that the monies paid as vacation are still attributable to the 120 hours beginning March 4, 2005. While not a typical vacation payout, it is still "in the nature of vacation pay, or vacation pay allowance, or as pay in lieu of vacation." The purpose underlying the statute is that when an employer has separately provided funds to cover a specified period of time during which the employee is unemployed, that employee ought not be able to also receive unemployment insurance benefits for that period, even if had the employee remained employed he would not have been required to take the time off. Technically, in a situation such as presented under the employer's vacation pay policy, where an employee has "banked" his vacation pay and has not taken off the comparable time, the employer is entitled to require the employee to in essence draw down on his pre-paid but unused vacation time before drawing unemployment insurance benefits.

Because the employer's policy provides for the allocation of the vacation pay over 120 hours, it would be attributed as \$201.03 per day over 15 days. One day would be allocated to March 4, 2005 in the week ending March 5, 2005. Five days are allocated to the week ending March 12,

2005; five days allocated to the week ending March 19, 2005; and the remaining four days to the week ending March 26, 2005. The total allocated to the week ending March 26, 2005 is then \$804.12, which is still well over the claimant's weekly earning allowance of \$317.00. Therefore, he is not eligible to receive unemployment insurance benefits until the week beginning March 27, 2005.

DECISION:

The representative's April 4, 2005 decision (reference 02) is affirmed. The vacation pay was correctly deducted. Vacation pay was properly applied through the week ending March 26, 2005. Benefits are allowed, provided the claimant is otherwise eligible, effective March 27, 2005.

ld/s