

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHOUAN PHOMMIVONG
Claimant

APPEAL NO. 08A-UI-01165-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 12/23/07 R: 04
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Phouan Phommivong (claimant) appealed a representative's January 28, 2008 decision (reference 02) that concluded he has been overpaid \$64.00 in benefits he received for the week ending December 29, 2007, because he had not correctly reported vacation pay he received from Temp Associates (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2008. The claimant notified the Appeals Section prior to the hearing that he was unable to participate in the hearing, and relied on the employer's statement that he received holiday and not vacation pay for December 25, 2007 and January 1, 2008. Jan Windsor appeared on the employer's behalf and verified the claimant received holiday pay and not vacation pay. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant correctly report vacation or holiday pay?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of December 23, 2007. He filed a claim for the week ending December 29 and reported he had earned \$68.00. He received \$245.00 in partial benefits for this week.

The employer paid the claimant \$70.00 in holiday pay for December 25, 2007, and \$70.00 in holiday pay for January 1, 2008. Initially, the employer incorrectly reported that the claimant received vacation pay totaling \$140.00 for these days.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation payment, the payment shall be treated as wages and deducted in accordance with the law. Iowa Code § 96.5-7. Holiday pay is also treated as wages. 871 IAC 24.13(2)(a).

It appears the Department incorrectly considered \$140.00 to be attributed to the week ending December 29 instead of allocating half it to the week ending December 29 and half to the week ending January 5, 2008. Since the employer paid holiday pay for December 25 and January 1, only \$70.00 of vacation pay should be attributed to the week ending December 29, 2007. This means the claimant has not been overpaid \$64.00 for the week ending December 29, 2007.

DECISION:

The representative's January 28, 2008 decision (reference 02) is reversed. The claimant received holiday and not vacation pay. As a result, only \$70.00 is attributable to the week ending December 29 and \$70.00 would be attributable to the week ending January 5, 2008. This means the claimant has not been overpaid \$64.00 for the week ending December 29, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css