

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MKOMBOZI B EMMANUEL
Claimant

REES ASSOCIATES INC
Employer

APPEAL 18A-UI-08036-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/24/18
Claimant: Respondent (5)**

Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

STATEMENT OF THE CASE:

The employer filed an appeal from the July 24, 2018, (reference 04) unemployment insurance decision that allowed benefits but found the claimant ineligible for benefits for the week ending June 30, 2018 due to his receipt of vacation pay. The parties were properly notified about the hearing. After reviewing the agency records and the information submitted by the employer the administrative law judge determined that no additional testimony was necessary and no hearing was held. Official notice was taken of agency records.

ISSUE:

Did the claimant receive vacation pay for the week ending June 30, 2018 that was deductible from his unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked and earned wages in the gross amount of \$408.00 for the week ending June 30, 2018. He accurately reported his wages to the agency when making his weekly claim. Claimant was not paid any vacation for the week ending June 30, 2018. The notice of protest submitted by the employer clearly indicates that the claimant was not paid any vacation at all.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant received no vacation pay for the one week ending June 30, 2018, thus no reduction in benefits should be made for that week due to receipt of vacation pay.

Iowa Code section 96.5(7) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 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" or paragraph "b", 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, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount 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 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 five workdays 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.

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.

Iowa Admin. Code r. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

Because the claimant did not receive any vacation pay for the week ending June 30, 2018, no deduction from his unemployment insurance benefits should be made due to his alleged receipt of vacation pay. The claimant did earn \$408.00 in wages which was properly reported, making him ineligible for benefits for the week ending June 30, 2018.

DECISION:

The July 24, 2018, (reference 04), decision is modified with no change in effect. The claimant did not receive any vacation pay for the week ending June 30, 2018. He did earn and properly report wages in the amount of \$408.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs