

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA M SPENCER
Claimant

APPEAL NO. 11A-UI-10446-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THREE EAGLES OF LINCOLN INC
Employer

**OC: 07/10/11
Claimant: Appellant (4)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated August 2, 2011, reference 01, that held she is not eligible for benefits the week ending July 19, 2011, due to receiving vacation pay. A hearing was held on August 30, 2011. The claimant participated. Melissa Haecker, participated for the employer. Employer Exhibit 1 and Claimant Exhibit A were received as evidence.

ISSUE:

The issue is whether the claimant received vacation pay.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer on Tuesday, July 12, 2011. She filed her claimant effective July 10, and she reported earnings of \$400 for the week ending July 16, and she received no benefits. She reported earnings of \$170 for the week ending July 23 and she received partial benefits of \$56.

When the employer received the notice of claim, the employer stated in the remarks section that claimant received final pay and vacation pay totaling \$1,120, but it did not separate and designate the period to which the vacation pay should apply. During the hearing, the employer participant stated that it paid claimant for 48 hours of vacation pay (\$10 an hour times 48) totaling \$480.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes claimant is not eligible for any benefits the week ending July 16, due to receiving regular pay/vacation pay earnings, but she is eligible to receive partial benefits due to receiving vacation pay.

Since the employer failed to protest the amount and period to which the vacation pay (\$480) should apply, it is limited to one week (or five days) from the time claimant last received her regular pay on July 12. Eighty dollars (\$80 = \$10 an hour times an 8-hour day) is applied to July 13, 14, and 15, for a total of \$240, which is added to the regular pay, which exceeds claimant's weekly benefit amount of \$226 for the week ending July 16. Claimant is not entitled to any benefits for this week.

Eighty dollars (\$80 = \$10 an hour times an 8-hour day) is applied to July 18 & 19 for a total of \$160, which is less than claimant's weekly benefit amount of \$226 for the week ending July 23. Claimant is entitled to receive partial benefits for this week.

DECISION:

The decision of the representative dated August 2, 2011, reference 01, is modified. The claimant is not eligible for benefits the week ending July 16, 2011, due to receiving excessive regular and vacation pay earnings. Claimant is entitled to partial benefits for the week July 23, 2011, due to receiving vacation pay.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw