

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HELEN W SCARFF**  
Claimant

**APPEAL NO. 10A-UI-07262-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENETIC ID NA INC**  
Employer

**Original Claim: 05/03/09  
Claimant: Appellant (1)**

Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated May 13, 2010, reference 03, which held the claimant ineligible for unemployment insurance benefits for the week ending May 16, 2009. After due notice, a telephone conference hearing was scheduled for and held on July 2, 2010. The claimant participated. The employer notified the administrative law judge prior to the hearing that it would not be participating in the hearing. The record consists of the testimony of Helen Scarff and Claimant's Exhibit A. Official notice is taken of agency record, in particular the employer's response to the notice of claim.

**ISSUE:**

Whether vacation pay was deducted for the correct period.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was laid off on May 8, 2009. May 8, 2009, occurred on a Friday. The claimant had worked the entire week from May 4, 2009 through May 8, 2009. The claimant filed a claim for benefits for the week ending May 9, 2009. The claimant reported wages of \$440.00 and vacation pay of \$401.00. The employer, in response to the notice of claim, filed a written designation of vacation pay to be applied to the week starting May 11, 2009, through May 14, 2009, in the amount of \$401.52.

**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.

Although the claimant did report both her wages and her vacation pay to the agency, she cannot apply vacation pay to the week where she worked and received wages. In addition, the

employer filed a written designation that the vacation pay applied from May 11, 2009, through May 14, 2009. By law, the designation controls how vacation pay will be applied. The representative correctly applied vacation pay to the week ending May 16, 2009. The claimant is not entitled to benefits for that week.

**DECISION:**

The decision of the representative dated May 13, 2010, reference 03, is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the week ending May 16, 2009.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw