

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMY L PATTERSON
Claimant

APPEAL NO. 08A-UI-03524-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMAHA COLD STORAGE TERMINALS INC
Employer

OC: 03/09/08 R: 01
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay Deductible from Benefits

STATEMENT OF THE CASE:

Jimmy L. Patterson (claimant) appealed a representative's April 7, 2008 decision (reference 03) that concluded he was not eligible to receive benefits for the week ending March 15, 2008, because Omaha Cold Storage Terminals, Inc. (employer) paid him vacation pay that was attributed to this week. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2008. The claimant participated in the hearing. Patrick Burke, the president, appeared on the employer's behalf. 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.

ISSUE:

Should the vacation pay the claimant received be attributed to the week ending March 15, 2008?

FINDINGS OF FACT:

The claimant worked for the employer until March 10, 2008. When his employment ended, the claimant earned an annual salary of \$68,500.00. At the time of his separation, the employer paid the claimant his unused vacation time that totaled \$3,031.84. The employer indicated the vacation pay should be attributed to one week.

The claimant established a claim for benefits during the week of March 9, 2008. He filed claims immediately.

REASONING AND CONCLUSIONS OF LAW:

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the specific dates to which vacation pay applies by the ten-day deadline, the unused vacation pay

must be applied to the first five working days after the claimant's last day of work. Iowa Code § 96.5-7, 871 IAC 24.16.

The vacation pay the claimant received is attributed to the week ending March 15, 2008. This means the claimant is not eligible to receive benefits for this week, but is eligible to receive benefits as of March 16, 2008.

DECISION:

The representative's April 7, 2008 decision (reference 03) is affirmed. The vacation payment the claimant received must be deducted from his unemployment insurance benefits for the week ending March 15, 2008. This means as of March 16, 2008, the claimant is eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css