

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RION D HEEREN

Claimant

APPEAL NO: 09A-UI-07538-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & A PRINTING INC

Employer

OC: 02/01/09

Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Rion D. Heeren (claimant) appealed a representative's May 14, 2009 decision (reference 03) that concluded he had been overpaid \$220.00 in benefits for the week ending February 14, 2009, because he had not correctly reported vacation pay he received from J & A Printing, Inc. (employer) that should be attributed to that week. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2009. The claimant participated in the hearing. No one on the employer's behalf responded to the hearing notice. Based on the evidence, the arguments of the claimants, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Has the claimant been overpaid \$220.00 in benefits he received for the week ending February 14, 2009, because he received vacation pay that should be attributed to this week?

FINDINGS OF FACT:

The claimant's last day of work for the employer was Tuesday, February 3. The claimant earned \$18.75 an hour. He worked a total of 16 hours the last week he worked for the employer.

The employer paid the claimant \$220.00 for his accumulated paid time off he had not yet used. The paid time off could be used for vacations, illnesses – personal or family, or any personal time off the employee needed.

The claimant established a claim for benefits during the week of February 1, 2009. He filed a claim for benefits for the week ending February 7. The claimant reported the wages he earned that week and the \$220.00 he received as his paid time off payment. The claimant filed a claim for benefits for the weeks ending February 14 and 21, 2009. He reported he had received \$220.00 in vacation pay each of these weeks. The employer indicated the \$220.00 should be attributed from February 9 to February 10, 2009.

Later, the claimant received information the \$220.00 he reported for three weeks, February 7, 14 and 21, was mistakenly being treated as a severance payment. A local representative told the claimant she would fix his claim. After the representative omitted the \$220.00 the claimant reported for the three weeks, the claimant received benefits for these three weeks. The Department paid the claimant \$178.00 in benefits for the week ending February 7 because he reported he had earned \$290.00 for this week. The claimant received his maximum weekly benefit amount of \$375.00 for the weeks ending February 14 and 21.

During the week of May 16, 2009, the Department recouped \$220.00 from benefits he was legally entitled to receive that week.

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 section 96.5-7. However, the law specifically states that payment for unused sick leave is **NOT** considered wages for unemployment insurance purposes, which means it is not deductible from benefits. 871 IAC 24.13(4) d. (Emphasis supplied.)

Since the employer's PTO time is a hybrid or mixture of vacation and unused sick leave time, and no breakdown of the percentage of vacation and unused sick leave time has been attributed to the total PTO time, there is no way to divide the vacation pay from the unused sick leave pay. Under this factual situation, the PTO pay the claimant received, \$220.00, cannot be deducted from his weekly benefit amount. This means the claimant was not required to report the \$220.00 he received in Paid Time Off.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 6.3-7. Since the claimant is not required to report the \$220.00 and it is not a deductible payment, the claimant has not been overpaid any benefits for the week ending February 14, 2009.

DECISION:

The representative's May 14, 2009 decision (reference 03) is reversed. Since the employer's PTO pay is a combination of both vacation and unused sick leave time and there is no way of apportioning the pay between the two, the PTO pay the claimant received, \$220.00, cannot be attributed to the week ending February 14 or deducted from his weekly benefit amount.

Therefore, the claimant is eligible to receive \$375.00 in benefits for the week ending February 14, 2009, and he has not been overpaid any benefits for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs