

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND E MEARS
Claimant

APPEAL NO: 08A-UI-02396-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIMM BROTHERS PLASTICS CORP
Employer

**OC: 02/10/08 R: 04
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Raymond E. Mears (claimant) appealed a representative's March 5, 2008 decision (reference 02) that concluded he was not eligible to receive benefits until February 24, 2008, because he received vacation pay from Grimm Brothers Plastics Corp. (employer) that was attributed to the weeks ending February 16 and 23, 2008. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2008. The claimant participated in the hearing. Linda Wilson, the human resource manager, 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 claimant's PTO payment be considered a vacation payment and deducted from his maximum weekly benefit amount?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of February 10, 2008. He filed claims for the weeks ending February 16 and 23, 2008.

The employer reported the claimant received a PTO gross payment of \$1,697.12 and this amount should be attributed to February 11 through 24, 2008. When the claimant talked to his local Workforce representative, he learned the PTO payment was not vacation pay and should not be deducted from his maximum weekly benefit.

The employer's PTO time consists of both vacation and unused sick leave hours. The employer's policy does not assign a value or a percentage to distinguish between vacation or sick leave hours. The employer's policy incorporates vacation and sick together and considers any accumulation of hour as PTO time. When the employer pays out PTO time, the employee's check indicates PTO time paid out, not vacation or sick leave pay.

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.

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, \$1,697.12, cannot be deducted from his weekly benefits. This means the claimant is eligible to receive benefits for the weeks ending February 16 and 23, 2008, if he meets all other eligibility requirements.

DECISION:

The representative's March 5, 2008 decision (reference 02) 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, \$1,697.12, cannot be deducted from his benefits. Therefore, the claimant is eligible to receive benefits for the weeks ending February 16 and 23, 2008, if he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs