

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT A AKERS**  
Claimant

**APPEAL NO. 08A-UI-07607-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAHASKA COUNTY TIRE INC**  
**MAHASKA COUNTY TIRE**  
Employer

**OC: 07/20/08 R: 03**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Scott Akers filed a timely appeal from the August 22, 2008, reference 01, decision that denied benefits for the week ending July 26, 2008 and that concluded Mr. Akers had received vacation pay that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on September 8, 2006. Mr. Akers participated. The employer provided a telephone number for the hearing, but was not available at that number at the time of the hearing. Exhibit One, A and Department Exhibits D-1, D-2 and D-3 were received into evidence. The record was left open so that the claimant could submit paystubs, which were received into the record as Exhibit B. The administrative law judge took official notice of the Agency's record of benefits paid to the claimant and wages reported by the claimant. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-07608-JTT.

**ISSUES:**

Whether Mr. Akers received vacation pay that was deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which accrued vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which accrued vacation pay should be applied.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Scott Akers was employed by Mahaska County Tire as a full-time tire repairman and service truck operator until Saturday, July 26, 2008. Mr. Akers' final pay rate was \$13.00 per hour. On July 11, 2008, the employer paid Mr. Akers \$617.50 in wages for 40 plus hours Mr. Akers had worked during the period of July 4-10. Mr. Akers commenced a vacation on or about July 11. On July 11, the employer paid Mr. Akers \$520.00 for 40 hours of vacation pay. This exhausted Mr. Akers' vacation pay benefits. On July 18, the employer paid Mr. Akers \$97.50 as wages for

7.5 hours of work he had performed during the period of July 11-17. On July 25, the employer paid Mr. Akers \$188.50 in wages for 14.5 hours of work he performed during the period of July 19-24. On July 25, 2008, the employer paid Mr. Akers \$104.00 in wages for the eight hours of work to be performed on July 26.

Mr. Akers established a claim for benefits that was effective July 20, 2008 and received benefits. At the time Mr. Akers established his claim for benefits, Workforce Development calculated his weekly benefit amount to be \$327.00.

For the week ending July 26, 2008, Mr. Akers reported \$293.00 in wages and was approved for \$115.00. Workforce Development withheld this amount and applied it toward an outstanding \$196.00 overpayment. For the week ending August 2, 2008, Workforce Development approved \$327.00 in benefits, but withheld \$81.00 and applied it toward the outstanding overpayment. For the same week, Workforce Development disbursed \$246.00 to Mr. Akers. For the weeks ending August 9 and 16, Workforce Development disbursed \$327.00 in weekly benefits to Mr. Akers. For the week ending August 23, Workforce Development approved \$327.00 in benefits, but withheld \$115.00 to recover what the Agency then believed was a \$115.00 overpayment for the week that ended July 26, 2008. For the week that ended August 23, Workforce Development disbursed \$212.00 to Mr. Akers. For the week that ended August 30, Workforce Development disbursed \$327.00 to Mr. Akers.

On July 23, 2008, Workforce Development mailed the employer a notice of claim concerning Mr. Akers. The notice of claim included an August 4, 2008 deadline for the employer's response. On July 24, Linda McDowell, Vice President, completed the employer's protest information on the notice of claim form. In the space provided for vacation pay information, Ms. McDowell indicated that the employer had paid Mr. Akers \$520.00 in gross vacation pay. In the space provided so the employer could designate the dates to which the vacation pay should be applied when determining Mr. Akers' unemployment insurance benefit eligibility, Ms. McDowell entered January 1 as the start date and July 15 as the end date. The period designated by the employer was the period of the employment during which Mr. Akers had earned or accrued the vacation pay benefit. The period designated by the employer pre-dated the effective date of Mr. Akers' claim for benefits by 20 days. Workforce Development received the completed notice of claim form back from the employer on July 24, 2008.

On August 26, and again on September 2, the employer faxed a statement to the Appeals Section concerning the August 22, 2008, reference 01, decision. Ms. McDowell indicated that the employer had paid Mr. Akers his vacation benefit before the business had closed.

#### **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 greater weight of the evidence in the record indicates that Mr. Akers received vacation pay prior to the separation for a vacation he took prior to the separation. The greater weight of the evidence indicates that Mr. Akers did not receive vacation pay at the time of the separation or in connection with the separation. The vacation pay Mr. Akers received prior to the separation, and prior to establishing his claim for unemployment insurance benefits, is not deductible from his unemployment insurance benefits. Mr. Akers is eligible for benefits for the week ending July 26, 2008, provided he is otherwise eligible.

**DECISION:**

The Agency representative's August 22, 2008, reference 01, decision is reversed. The claimant did not receive vacation pay that was deductible from his unemployment insurance benefits. The claimant is eligible for unemployment insurance benefits for the week ending June 26, 2008, provided he is otherwise eligible.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css