

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW G FRANK**  
Claimant

**APPEAL NO. 09A-UI-02593-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 12/07/08**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(7) – Vacation Pay  
Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Matthew Frank filed a timely appeal from the February 10, 2009, reference 01, decision that denied benefits for the three-week period of December 7 through 27, 2008. After due notice was issued, a hearing was held on March 13, 2009. Claimant participated. The employer did not respond to the hearing notice and did not participate. Exhibits A and B and Department Exhibits D-1 through D-3 were received into evidence. The record was left open for the limited purpose of allowing the claimant to submit a copy of the separation agreement in connection with the severance pay issue. The claimant did not provide the requested document.

**ISSUES:**

Whether the claimant received vacation pay that is deductible from his unemployment insurance benefits.

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

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

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

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

Whether Iowa Workforce Development appropriately determined the period to which any severance pay should be applied.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthew Frank was employed by The Hon Company as a full-time production business manager from October 2005 until October 28, 2008, when the employer laid him off. At the time Mr. Frank separated from the employment he had accrued four weeks of vacation pay benefits that he had not yet used. The total value of the vacation pay benefit was \$5,354.52. At the time Mr. Frank separated from the employment, the employer provided him with seven weeks wages as severance pay. The total value of the severance package was \$11,032.13. The severance pay was calculated based on the length of Mr. Frank's employment. Mr. Frank received both amounts from the employer. Mr. Frank received the vacation pay at the time of the separation. Mr. Frank received the severance pay over the course of several weeks. The final week of severance pay was disbursed to Mr. Frank by means of a check issued on December 23, 2008 for the week ending December 20, 2008.

On December 16, 2008, Iowa Workforce Development mailed a notice of claim concerning the above claim to the employer's address of record. The notice of claim contained a warning that the employer's response must be postmarked, faxed or returned by the due date set forth on the notice, which was December 26, 2008. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. On December 19, 2008, the employer completed information on the notice of claim form. The employer did not protest the claim for benefits. The employer provided information regarding the vacation pay and severance pay in the space provided. The employer provided the amounts referenced above. The employer designated the time period to which the vacation pay should be applied as "11/1/08." The employer designated the period to which the severance pay should be applied as "7 wks."

The employer's response was received by Workforce on December 21, 2008.

In the absence of meaningful information from the employer regarding the period to which the vacation pay should be applied, the Workforce Development representative apportioned the vacation pay to the first five working days that followed Mr. Frank's last day in the employment, which was Tuesday, October 28, 2008. The Workforce Development representative apportioned three days of the vacation pay to October 29, 30 and November 1, 2008. The amount apportioned was \$3,212.70. The Workforce Development representative apportioned the remaining two days of vacation pay to November 3 and 4, 2008. The amount apportioned was \$2,141.80.

With the limited information from the employer regarding the dates to which the severance amount should be applied, the Workforce Development representative apportioned the severance pay over the period of seven weeks, utilizing a five-day workweek. The Workforce Development representative used as a starting day for the severance pay, the day immediately following November 4, 2008, the last to which vacation pay had been apportioned. The Workforce Development representative apportioned the first three days of severance pay, \$945.60, to November 5-7, 2008. The Workforce Development representative apportioned five days of severance pay, \$1,576.00, to the weeks that ended November 15 through December 20, 2008. The Workforce Development representative apportioned the remaining two days of severance pay, \$630.00, to December 22 and 23, 2008, the Monday and Tuesday of the week that ended December 27, 2008.

Mr. Frank's claim for benefits was effective December 7, 2008. Mr. Frank had reported vacation pay and/or severance pay that exceeded his \$375.00 week benefit amount during the weeks

that ended December 13 and 20, 2008 and received no benefits. For the week ending December 27, 2008, Mr. Frank reported zero wages and received \$375.00 in benefits.

Because the apportioned severance pay exceeded Mr. Frank's weekly benefit amount for the week that ended December 27, 2008, the Workforce Development representative concluded that Mr. Frank was not eligible for unemployment insurance benefits for that week and concluded Mr. Frank had been overpaid \$375.00 for that week.

#### **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.

Mr. Frank received the vacation pay amount referenced above. The weight of the evidence indicates that the employer made a timely designation of the amount of the vacation pay, but did not provide meaning information regarding the period to which the vacation pay should be applied. The evidence indicates that Workforce representative appropriately applied the benefits to the first five working days following Mr. Frank's last day of employment.

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not

disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

871 IAC 23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

871 IAC 24.13(3)c provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

An individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received wages in lieu of notice, a separation allowance, severance pay, or dismissal pay. Iowa Code section 96.5(5)(a). If the remuneration is less than the unemployment insurance benefits which would otherwise be due, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Iowa Code section 96.5(5).

Mr. Frank received the severance pay amount referenced above. The weight of the evidence in the record indicates that the employer provided a timely designation of the amount of the severance pay. The employer provided timely, but incomplete information about the dates to which the severance pay should be applied. The evidence indicates that the Workforce Development representative acted reasonably in apportioning the severance pay amount over the seven-week period that immediately followed the dates to which the vacation pay was applied.

Mr. Frank was not eligible for benefits for the three-week period of December 7 through 27, 2008.

**DECISION:**

The Agency representative's February 10, 2009, reference 01, decision is affirmed. The claimant received vacation pay and severance pay. The Workforce Development representative appropriately applied the vacation pay and severance pay when redetermining the claimant's eligibility for benefits. The apportioned amounts exceeded the claimant's weekly benefit amount for the three weeks in question. The claimant was not eligible for benefits for the three-week period of December 7 through 27, 2008.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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