

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DALLAS J MOORE**  
Claimant

**APPEAL NO. 09A-UI-11445-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REG MARKETING & LOGISTICS GROUP**  
Employer

**Original Claim: 02/22/09**

**Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay  
Section 96.5-5 – Severance Pay

**STATEMENT OF THE CASE:**

Dallas J. Moore (claimant) appealed three representative's decisions, all issued on August 4, 2009, reference 02, reference 03, and reference 04. Reference 02 concluded the claimant was ineligible for benefits for the two weeks ending April 11, 2009, due to receipt of vacation pay from REG Marketing & Logistics Group, L.L.C. (employer); reference 03 concluded he was ineligible for benefits for the five weeks ending March 28, 2009, due to the receipt of severance pay from the employer, and reference 04 concluded the claimant was overpaid benefits for the three-week period ending April 11 due to the vacation and severance pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 26, 2009. This appeal is on the reference 03 decision, and was consolidated for hearing with two related appeals, 09A-UI-11444-DT and 09A-UI-11446-DT on the reference 02 and reference 04 decisions, respectively. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant's severance pay properly allocated and deducted?

**FINDINGS OF FACT:**

The claimant started working for the employer in 2007. He worked full-time as an inside sales coordinator for biodiesel on a Monday through Friday schedule. His last day of work was February 24, 2009; he was informed at that time that his position was being eliminated. At that point he was earning an hourly wage of \$15.50 and was paid biweekly, every other Friday, for work completed through the prior week. He did not have a vacation eminently scheduled to begin.

On March 13, the employer paid the claimant his regular biweekly paycheck reflecting 80 hours of work for the pay period that began on February 23; as he had only worked two of the work ten days of the pay period, the pay for the remaining eight days pay was essentially dismissal pay. On March 27, the employer again issued the claimant a paycheck reflecting 80 hours for the pay period

that began on March 9 and ended on March 22; since he did not work any days in this period, the entire payment was dismissal pay.

On the claimant's March 13 paycheck, the employer also showed the payment of vacation in the amount of \$1,277.82, as well as the payment of personal leave in the amount of \$635.50.

The claimant established an unemployment insurance benefit year effective February 22, 2009. His weekly benefit amount was calculated to be \$361.00. On March 4, 2009, the employer responded to the notice of the claimant's claim by submitting the protest form, not protesting the claim but marking the box on the form that the claimant had received "severance pay, dismissal pay, separation allowance, or wages in lieu of notice." No amount was indicated in the place provided for an amount; rather, the employer stated only, "30 day pay continuation." The employer designated the dates covered by this pay as February 25 through March 26, 2009.

On the same form, the employer did not complete the section regarding receipt of vacation pay, but rather in that space only stated, "See Remarks." In the remarks portion of the form the employer noted, "Accumulated personal leave of 41 hrs and vacation time of 82.44 hrs will be paid on 3/13/09 in the amount of \$1,913.32." No specification was made as to which time frame the vacation pay was to be applied.

The claimant made weekly claims for the four benefit weeks ending February 28, March 7, March 14, and March 21; for each of those weeks, he reported wages and/or vacation pay in excess of his weekly benefit amount plus \$15.00. Beginning the benefit week ending March 28 he reported no wages or vacation and began receiving his weekly benefit amount.

#### **REASONING AND CONCLUSIONS OF LAW:**

If vacation pay or severance pay was or will be received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility. Iowa Code §§ 96.5-5, 96.5-7. If the vacation time would normally cover more than one week and the employer wishes to have the vacation pay distributed evenly throughout the period to which the vacation pay could be allocated, it must make a timely report to the Agency making that designation. 871 IAC 24.16(3). When multiple deductible payments are made, vacation pay "shall be deducted first . . . unless otherwise designated by the employer." 871 IAC 24.13(1). If an employer fails to make a timely or proper designation of a specific vacation pay allocation, "the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked . . ." 871 IAC 24.16(3).

The employer did not make a specific vacation pay allocation; it only reflected that 82.44 hours of accrued vacation was being paid, as well as 41 hours of accumulated "personal leave". "Personal leave" is not per se a defined term in the unemployment insurance rules or statute, but "excused personal leave" is defined: "[A]lso referred to as casual pay or random pay, [it] is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be fully deductible only when taken in conjunction with a scheduled period of vacation in which case it shall be treated as vacation . . ." 871 IAC 24.13(3)(b) (emphasis added). By necessary inference, if there was no "scheduled period of vacation," then the personal leave is not treated as vacation and is not deductible; rather, it would be treated more as non-deductible, paid-out unused sick leave. 871 IAC 24.13(4)(d). Therefore, the 41 hours of personal leave should not have been deducted.

Further, since the employer did not make a proper specific designation of any specific dates to which the 82.44 hours of vacation should be applied, pursuant to rule 871 IAC 24.16(3), all of the vacation must be applied to the one-week period starting on the first workday following the last day worked, i.e., February 25, February 26, February 27, March 2, and March 3.

The employer designated a period of February 25 through March 26 for the severance or dismissal pay; the first several days, through March 3, does overlap with the designation of vacation pay, above. However, without a more specific proper designation of vacation pay by the employer, the law does not preclude the overlap of multiple forms of wage substitute allocation. Therefore, for the week ending February 28, three days each of vacation pay and severance pay were reportable and deductible, and for the week ending March 7, two days of vacation pay and five days of severance pay were reportable and deductible. These amounts are sufficiently high to render the claimant ineligible for any additional partial benefits for those weeks.

While the claimant was last paid on March 27, the available information indicates that this was his last wage substitute payment, and that due to the week delay between the end of the pay period covered and the pay day, the actual last day to which paid hours were attributable was Friday, March 20. The general rule is that deductions from unemployment insurance payments for wages or wage substitutes are on a "when earned" basis rather than on a "when paid" basis. 871 IAC 24.52(8). Since none of the severance or dismissal pay was for any hours after March 20, there were no deductible payments for severance or dismissal pay allocatable to the benefit weeks beginning the week ending March 28. Therefore, for the weeks ending March 14 and March 21, five days' worth of severance pay was reportable and deductible for each week. These amounts are sufficiently high to render the claimant ineligible for any additional partial benefits for those weeks.

The Agency's combined allocation of vacation pay and severance pay beyond March 21 was incorrect.

**DECISION:**

The representative's August 4, 2009 decision (reference 03) is reversed. The severance pay was not correctly deducted. Vacation pay properly applies only to the work week following the last day worked, ending March 3, 2009. Severance pay is attributable only through the week ending March 21, 2009. Benefits are allowed, provided the claimant is otherwise eligible, effective March 22, 2009.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw