

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLIN D GRIMM
Claimant

APPEAL NO. 10A-UI-04193-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BESSER COMPANY
Employer

OC: 03/01/09
Claimant: Appellant (2)

871 IAC 24.13(3)(b) – Paid Time Off
Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 10, 2010, reference 01, which deducted vacation pay from the claimant's unemployment insurance benefits. After due notice, a telephone hearing was conducted on May 3, 2010. The claimant did participate. The employer participated through Teresa Smiley.

ISSUE:

At issue is whether the claimant's paid time off (PTO) payment be considered a vacation payment and deducted from his maximum benefit amount.

FINDINGS OF FACT:

The claimant's last day of work for this employer was April 30, 2010. On or about May 3, 2010 the employer paid Mr. Grimm for 158.92 hours of paid time hours he had accumulated to the date of separation. The claimant received a lump sum gross payment of \$3,196.33 for these hours. The employer's paid time off includes time off for vacation, illness, personal time etcetera.

When Mr. Grimm filed his weekly claims for benefits he did not report this payment as he did not consider it to be vacation pay.

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.

Paid time off (PTO) is the equivalent of excused personal leave. It is paid time off that an employee accrues and can be used for sick leave, vacation leave or other personal time off

pursuant to the employer's PTO's policy. Paid time off is not the equivalent of vacation pay which is a separate classification that the Iowa legislature made deductible for unemployment insurance benefits by enacting Iowa Code section 96.5(7). Under the administrative rule, paid time off can only be deducted from unemployment insurance benefits when it is used during the course of the employment for a scheduled vacation.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes the claimant did not receive vacation pay that deductible from his unemployment insurance benefits. As the employer's PTO time is a hybrid mixture of vacation, unused sick leave time and personal time it is not possible to divide the vacation pay from the unused sick or personal time. The administrative law judge thus concludes that the \$3,196.33 not be deducted from his weekly benefits.

DECISION:

The representative's decision dated March 10, 2010, reference 01, is reversed as the employer's PTO pay is a combination of both vacation, unused sick time and personal time and it is not possible to apportion the pay. The PTO pay the claimant received in the amount of \$3,196.33 cannot be deducted from his benefits. Therefore, the claimant is eligible to receive benefits for the week ending March 7, 2009.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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