

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD L BELDEN
Claimant

APPEAL NO: 12A-UI-14442-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI DRAIN CORP
Employer

**OC: 10/28/12
Claimant: Appellant (1)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 5, 2012 determination (reference 03) that held him ineligible to receive benefits for the weeks ending November 10 and 17, 2012, because he received vacation and/or severance pay these weeks that exceeded his weekly benefit amount. The claimant participated in the hearing with his wife, Cindy Belden, as a witness. Kris Stringham, the human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits for the weeks ending November 10 and 17, 2012, because the vacation and severance pay that must be attributed to these weeks exceeds his weekly benefit amount plus \$15.00.

ISSUE:

Should vacation and/or severance pay be attributed to the week ending November 10 and 17?

FINDINGS OF FACT:

The claimant's last day of work for the employer was October 30, 2012. He had earned \$15.45 an hour while working for the employer. The claimant established a claim for benefits during the week of October 28, 2012. His maximum weekly benefit amount on this claim is \$396.

A notice of claim was mailed to the employer on November 5, 2012. The employer completed the notice of claim on November 6 and reported the claimant received a vacation payment of \$719.20 that should be attributed to October 31 through November 6. The employer also reported the claimant received a severance payment of \$1,236.00 that should be attributed to November 7 through November 20, 2012.

The claimant reported all of his vacation and severance pay during the week ending November 3, 2012. The claimant did not know the employer could or did designate the days that his vacation and severance pay should be applied.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation payment or becomes obligated to make a payment, the 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 timely designate the dates to which vacation pay applies, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5(7), 871 IAC 24.16. If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of the extension in writing to the Department. 871 IAC 24.26(2).

A claimant is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay attributable to the same week. Iowa Code § 96.5(5)a. Employers are permitted to designate the period to which the severance pay is attributable if the designation is made within ten calendar day after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1).

The employer had until November 15, 2012, to report the claimant's vacation and severance pay. Since the employer sent this information to the Department on November 6, 2012, the employer timely designated the dates the claimant's vacation and severance payment should be attributed to.

The employer designated that the vacation payment should be attributed to October 31 through November 6. Since the employer designated five working days, this means the claimant received a daily vacation payment of \$143.84 which must be attributed to October 31, November 1, 2, 5 and 6. For the week ending November 10, two days of vacation pay and three days of severance payment must be attributed to this week. This means the \$287.66 in vacation pay is attributed to this week and \$370.80 in severance pay must be attributed to this week. (The employer attributed the severance payment to ten days so each day the claimant received \$123.60.) Since the claimant's vacation and severance pay exceeds his weekly benefit amount of \$396.00 plus \$15.00, he is not eligible to receive benefits for the week ending November 10, 2012.

For the week ending November 17, five days of severance pay must be attributed to this week. Since a severance payment of \$618.00 must be attributed to the week ending November 17, he is not eligible to receive benefits for this week.

For the week ending November 24, two days of severance pay must be attributed to this week. This means that \$247.20 must be attributed to this week. If the claimant does not have any wages, he may be eligible to receive partial benefits for the week ending November 24, 2012.

DECISION:

The representative's December 5, 2012 determination (reference 03) is affirmed. The claimant is not eligible to receive benefits for the week ending November 10 and 17, 2012, because his vacation and/or severance payments must be attributed to these weeks and exceed his weekly benefit amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs