

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN D BROWN
Claimant

APPEAL NO. 10A-UI-17491-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

21ST CENTURY COOP
Employer

OC: 06/14/09
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated December 16, 2010, reference 02, that disqualified him for the three weeks ending July 4, 2009 due to receiving vacation pay. A hearing was held on February 3, 2011. The claimant participated. The employer did not participate.

ISSUE:

The issue is whether the claimant received vacation pay.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer on Monday, June 15, 2009. The claimant was a truck driver who usually worked Monday thru Friday. The claimant acknowledges that his employer paid him his accumulated vacation pay of \$1,271 with his final pay on June 16.

The claimant's weekly benefit amount is \$361. A department representative advised claimant to report \$999 vacation pay for the week ending June 20, and the remainder, \$254, for the week ending June 27, and so he did. The claimant received no benefit the week ending June 20, and a partial benefit of \$107 for the week ending June 27. The claimant reported no earnings the week ending July 4, and he received \$361 benefit.

The employer did not respond to the hearing notice. It protested his claim by designating his \$1,271.20 vacation pay to a period from June 16 to July 2, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes claimant is not eligible for benefits for the three weeks ending July 4, 2009 due to receiving \$1,271 vacation pay from his employer.

It appears the claimant might have received miss-advice from a department representative about how to report his vacation pay when claiming benefits. However, department miss-advice does not excuse or waive the overpayment recovery. Since the employer designated the period to which the pay applies, the one-week disqualification period does not apply. The employer broke down the pay to 13-days that is consistent with the claimant's work schedule and last regular pay rate. The formula is each vacation day is \$97.78 (\$1,171.20 divided by 13 days).

Since claimant worked on Monday, June 15, four vacation days are applied from June 16 thru June 20 (\$391.12), five days from June 22 to June 27 (\$488.90), and the remaining four days (\$391.12) from June 29 thru July 4. Since claimant had vacation pay earnings for each of the three weeks that exceeds his \$361 weekly benefit amount, his not eligible for any benefit.

DECISION:

The decision of the representative dated December 16, 2010, reference 02, is affirmed. The claimant is not eligible for benefits the 3-weeks ending July 4, 2009 due to receiving vacation pay from 21st Century Coop.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs