

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NARCISO E GALVAN
Claimant

APPEAL NO: 06A-UI-08666-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROGRESSIVE FOUNDRY INC
Employer

**OC: 07/16/06 R: 02
Claimant: Appellant (2)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Narciso E. Galvan (claimant) appealed a representative's August 22, 2006 decision (reference 01) that concluded the claimant was ineligible for benefits for the week ending July 22, 2006 due to receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2006. 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 was 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 vacation pay properly allocated and deducted?

FINDINGS OF FACT:

The claimant started working for the employer on February 2, 2005. He works full time as a laborer in the employer's foundry. The normal shift is 6:00 a.m. to 3:30 p.m. or 4:30 p.m., but with frequent Saturday overtime. The employer had a plant shutdown beginning July 11 continuing through July 24, 2006. The claimant worked the day before the shutdown, July 10, and resumed working July 25, 2006.

The employer's normal paydays are Friday, with pay issued for work the prior week. On July 7, 2006, the claimant received two checks, one his regular paycheck for the week ending July 1, and the other in a gross amount of \$489.00 that he later learned was vacation pay. The claimant had accrued vacation at that point of 40 hours; his hourly rate of pay was approximately \$12.22 per hour. The claimant had calculated the vacation pay as attributable to Tuesday through Saturday of the week ending July 15, 2006, and so did not file a claim for unemployment insurance benefits for that week. He did file a claim effective July 16, 2006. The

employer responded to the notice of his claim by reporting the payment of \$489.00 in vacation pay, with no specific allocation as to which days were covered.

The claimant filed a weekly claim for the week ending July 22, 2006 for which he reported no wages or vacation, and so was paid his full weekly benefit amount of \$400.00. The representative's decision in this case was based upon the understanding that the \$489.00 for five days all applied to the week ending July 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay was 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 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.

871 IAC 24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, 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 as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

Emphasis added.

At the very least, the vacation pay was not properly allocated, as if it were allocated for the straight five days after the last day worked, the first four days clearly would be July 11 through July 14; there then might be a debatable issue as to whether the fifth day of vacation pay (\$98.00 – rounded) should be allocated to Saturday, July 15, as the claimant had been working frequent Saturdays, or should be allocated to Monday, July 17, 2006. Worse case, \$98.00 would be allocated to July 17 and hence to the week ending July 22, which would not serve to fully disqualify the claimant for benefits for that week, but would only serve to reduce his eligibility amount for that week.

However, since the claimant did not file his claim for unemployment insurance benefits for the first workweek of the shutdown, pursuant to the rule none of the vacation pay would be deductible against any week of benefits, including the week ending July 22, 2006. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's August 22, 2006 decision (reference 01) is reversed. The vacation pay was not correctly deducted. None of the vacation pay issued on July 7, 2006 is deductible against the claimant eligibility for unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible, effective July 16, 2006.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs