

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HEATHER S FINERAN
Claimant

APPEAL NO: 14A-UI-10261-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBS CORPORATION
Employer

OC: 03/09/14
Claimant: Appellant (4)

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 17, 2014, reference 04, that concluded she was ineligible to receive unemployment insurance benefits for the two weeks ending March 22, 2014, due to the receipt of vacation pay. A telephone hearing was held on October 15, 2014. The claimant participated in the hearing. Chad Plumb participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant receive deductible vacation pay and was it properly deducted?

FINDINGS OF FACT:

The claimant worked for the employer from March 2013 to March 10, 2014. Her rate pay was \$24.04 per hour or \$961.70 per week.

After her separation from employment, the claimant received payment for \$192.40 in wages for March 10, \$1,731.06 for 72 hours of unused vacation pay and \$1,923.40 for 80 hours of severance pay.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 9, 2014. Her weekly benefit amount was \$439.00. The claimant received assistance from a workforce advisor in Carroll, Iowa. She showed the advisor the checks for wages, vacation pay, and severance pay. When she told the advisor that the severance payment was a bonus, he said it did not need to be reported. She understood that the advisor had reported the two weeks of vacation but no vacation pay was reported.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer reported payments of \$1,731.06 for 72 hours of unused vacation pay and \$1,923.40 for 80 hours of severance pay. The notice of claim form states: "Failure to provide the time period to which the vacation pay applies shall result in the entire amount of the vacation pay being applied to the 5 working days following the

last day worked.” The notice of claim form provided a space for employer remarks. The employer did not note anywhere on the form the vacation period for the vacation pay amount.

The claimant received gross benefits of \$429.00 for the week ending March 15 and \$439.00 per week for the weeks ending March 22 and March 29, and \$434.00 for the week ending April 5, 2014.

An unemployment insurance decision was mailed to the claimant's last-known address of record on September 17, 2014. The decision stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by September 27, 2014.

The claimant did not receive decision until October 1, 2014. She immediately filed a written appeal on October 2, 2014.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The appeal is deemed timely in this case because she did not have a reasonable opportunity to file her appeal during the appeal period and immediately appealed after receiving the decision in the mail. 871 IAC 24.35(2).

The next issue in this case is whether the claimant received vacation pay deductible from her unemployment insurance benefits.

Under the unemployment insurance law, a person is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has severance pay or vacation pay of over his weekly benefit amount attributable to the same week. Iowa Code §§ 96.5-5-a and 96.5-7. Employers are permitted to designate the period to which the severance pay or vacation pay is attributable if the designation is made within ten calendar days after the employer receives notice of the filing of the individual's claim. 871 IAC 24.13(1). The statute and rules provided that if the employer does not designate the vacation period, the vacation pay will not be deducted for more than one week. Iowa Code § 96.5-7-d; 871 IAC 24.16(3). The rules direct that if the specific vacation period is not designated, the entire amount of vacation pay will be applied to the one-week period starting with the day after the last day of work. 871 IAC 24.16(3). There are no similar provisions that apply when an employer fails to designate the severance pay period.

In addition, the rules provide that if vacation pay is paid in conjunction with some other deductible payment, the vacation pay is deducted first unless the employer has designated otherwise. 871 IAC 26.13(1).

The evidence in the record establishes that the employer made a timely response to the notice of claim but did not designate the specific vacation period to which the vacation pay should be allocated. According to the statute and rule, the Agency should have applied the entire vacation pay amount to the five workdays starting March 11. The claimant's vacation pay would apply to March 11, 12, 13, 14, and 17. The fact that she thought that the workforce advisor had reported the vacation pay does not change the outcome. The claimant is ineligible for benefits for the week ending March 15 due to the receipt of vacation pay.

DECISION:

The unemployment insurance decision dated September 17, 2014, reference 04, is modified in favor of the claimant. The claimant is ineligible for benefits for the week ending March 15 due to the receipt of vacation pay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css