

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BENJAMIN J DURBIN
3108 SUNNYSIDE
BURLINGTON IA 50601

WAL-MART STORES INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05706-DT
OC: 04/24/05 R: 04
Claimant: Appellant (2/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-7 – Vacation Pay
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Benjamin J. Durbin (claimant) appealed a representative's May 20, 2005 decision (reference 03) that concluded the claimant was overpaid benefits for the week ending April 30, 2005, due to receipt of vacation pay from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 17, 2005. The claimant participated in the hearing. Diane Barton appeared on the employer's behalf. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on March 17, 2004. He worked full time (36 hours per week) on a Friday, Saturday, and Sunday 12-hour schedule. His position was an order-filler in the employer's Mount Pleasant, Iowa, regional distribution center. His hourly rate of pay was \$14.60. His last day of work was April 2, 2005. The claimant understood that after that time, he was on a leave of absence. On April 22, 2005, he was informed that his employment was ended. On April 21, 2005, the claimant received a paycheck for his hours worked on April 2, 2005; on May 5, 2005, the claimant was paid for .17 hours of time spent on the phone with Ms. Barton on April 22, 2005 when she informed him of the separation, as well as for his remaining 8.62 hours of accrued vacation. The gross amount of these amounts as reflected on the final check was \$128.33.

The claimant established an unemployment insurance benefit year effective April 24, 2005. His weekly benefit amount was calculated to be \$298.00. He filed a weekly claim for the week ending April 30, 2005 indicating the receipt of no income, and he received his full weekly benefit amount for that week. He filed a weekly claim for the week ending May 7, 2005 indicating the receipt of income in the amount of \$87.00, the net amount of his final check; he therefore received partial unemployment insurance benefits for that week in the amount of \$211.00.

A notice of claim was sent to the employer's representative on April 26, 2005. The employer's representative mailed its response on May 6, 2005, received by the Agency on May 11, 2005. The employer's representative's response indicated that the claimant had been paid vacation pay in the amount of \$62.93, rounded to \$63.00, for the period ending April 30, 2005. Based upon this information, the Agency representative concluded that the claimant was overpaid \$63.00 in benefits for the week ending April 30, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether vacation pay was properly deducted and as a result whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

Under the statute, the claimant's vacation pay would begin to be allocated on the first workday after the separation of employment. Even using April 22, 2005 as the date of separation, given

the claimant's work schedule, his next workday would have been either April 22 itself or April 23, 2005, and the vacation should have been allocated to that day. He did not have enough vacation accrued to exceed the one workday, so there is no remaining vacation pay to be allocated into the week beginning April 24, 2005 or any week thereafter. Therefore, none of the vacation pay should have been allocated to either the week ending April 30, 2005 or the week ending May 7, 2005. The claimant was entitled to his full benefit amount for both of those weeks.

DECISION:

The representative's May 20, 2005 decision (reference 03) is reversed. The vacation pay was not correctly deducted. Vacation pay applied only to the week ending April 23, 2005. Benefits are allowed, provided the claimant is otherwise eligible, effective April 24, 2005. The claimant was not overpaid unemployment insurance benefits for the week ending April 30, 2005. Rather, he was underpaid unemployment insurance benefits for the week ending May 7, 2005. The matter is remanded to the Claims Section to resolve the underpayment issue.

ld/tjc