

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DUC H NGUYEN**  
Claimant

**APPEAL 15A-UI-01880-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/29/14  
Claimant: Appellant (2)**

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Iowa Code § 96.3(7) – Overpayment  
Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 10, 2015, (reference 02), unemployment insurance decision that found the claimant overpaid unemployment insurance benefits due to his failure to report vacation pay when making his weekly claim. After due notice was issued, a telephone conference hearing was held on March 25, 2015. Claimant participated with the assistance of interpreter Phung Nguyen. Official notice was taken of Iowa Workforce Development Agency records. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the vacation pay deducted for the correct period and was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was laid off due to lack of work on December 22, 2014. He worked a full day on December 23. He was laid off due to lack of work on December 24. He was paid holiday pay on December 25. He was laid off due to lack of work on December 26. He filed a claim for unemployment benefits for the week ending December 27, 2014. He properly reported his earnings for that week.

The claimant did not claim benefits the next week, the week ending January 3, 2015. He took his vacation time during that week, not the week prior.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the vacation pay was deducted for the incorrect period.

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.

Iowa Admin. Code r. 871-24.16(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.

While the employer may think of payment on a bi-weekly basis, the claimant's claim for benefits is evaluated on a weekly basis. The claimant did not improperly report his vacation pay as he did not take any vacation time during the week ending December 27, 2014.

**DECISION:**

The February 10, 2015, reference 02, decision is reversed. The vacation pay was deducted for the incorrect period. The claimant has not been overpaid unemployment insurance benefits in the amount of \$182.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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