

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J ALTMAN**  
Claimant

**APPEAL NO. 17A-UI-08995-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PIONEER HI-BRED INTERNATIONAL INC**  
Employer

**OC: 07/23/17**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Michael Altman filed a timely appeal from the August 22, 2017, reference 04, decision that denied unemployment insurance benefits for the week of July 23-29, 2017, based on the claims deputy's conclusion that Mr. Altman's wages and vacation pay for the week exceeded his unemployment insurance benefits amount. After due notice was issued, a hearing was held on September 21, 2017. Mr. Altman participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-08996-JTT. At the time of the hearing, Exhibits A and B and Department Exhibits D-1 through D-7 were received into evidence. The administrative law judge left the hearing record open for the limited purpose of allowing Mr. Altman to submit documentation of deposits to his credit union account during the period of July 25, 2017 through August 31, 2017. On the afternoon of September 21, 2107, Mr. Altman submitted a credit union document that showed deposits to a financial account that posted on July 24, 2017 through August 4, 2017. The administrative law judge received the additional exhibit into evidence as Exhibit C.

**ISSUE:**

Whether the claimant received vacation pay that is deductible from the claimant's unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Altman was employed by Pioneer Hi-Bred International as a full-time electrician until July 25, 2017. Mr. Altman's final wage was \$26.45 per hour. During the week that started Sunday, July 23, 2017, Mr. Altman worked an eight-hour day on Monday, July 24, 2017 and a portion his workday on Tuesday, July 25, 2017. The gross wages for the work on July 23 would have totaled \$211.60. At the time Mr. Altman separated from the employment, he had accrued vacation pay that he had not yet used. Mr. Altman believes he had accrued the equivalent of 38 hours of vacation pay benefits that he had not used. If that information is accurate, Mr. Altman would have accrued an unused vacation pay benefit totaling \$1,005.10. Mr. Altman denies that he has received any vacation payout from the employer in connection with his separation from

the employment. Mr. Altman is subject to a \$92.00 per week child support garnishment of his wages. Mr. Altman asserts that his wages from July 23-24, 2017, after taxes and the child support garnishment resulted in an August 4, 2017 \$65.86 net deposit to his bank account. Mr. Altman has not provided bank/credit union account records for the period beyond August 4, 2017.

Mr. Altman established an unemployment insurance claim that was deemed effective July 23, 2017. Workforce Development calculated Mr. Altman's weekly benefit amount to be \$473.00. No taxes had been withheld from the benefits. However, the unemployment insurance benefits are subject to the child support garnishment. At the time Mr. Altman established the claim, he had previously been overpaid \$439.00 in unemployment insurance benefits that he not repaid to Iowa Workforce Development. When Mr. Altman made his weekly claim for the week that ended July 29, 2017, he reported \$208.00 in benefits and was approved for \$383.00 in reduced benefits. Workforce Development offset the \$383.00 in approved benefits against the prior \$439.00 overpayment. When Mr. Altman made his weekly claim for the week that ended August 5, 2017, he reported zero wages. Mr. Altman was approved for \$473.00 in benefits for the week that ended August 5, 2017. Workforce Development offset \$56.00 of those benefits against the prior overpayment. Workforce Development disbursed the remainder, \$417.00, to Mr. Altman and his child support obligation. When Mr. Altman made his weekly claim for the week that ended August 12, 2017, he reported zero wages. Workforce Development approved \$473.00 in benefits and disbursed the benefits to Mr. Altman and his child support obligation. When Mr. Altman made his weekly claim for the week that ended August 19, 2017, he reported zero wages. Workforce Development approved \$473.00 in benefits, but offset \$383.00 in benefits to recover what the agency believed at that time had been a \$383.00 overpayment of benefits for the first week of the claim, the week that ended July 29, 2017. Workforce Development disbursed the remainder of the benefits, \$90.00, to Mr. Altman and his child support obligation.

On July 26, 2017, Iowa Workforce Development had transmitted electronic notice of Mr. Altman's claim to the employer. The notice of claim provided an August 7, 2017 deadline for the employer's response. The employer filed its response on August 7, 2017. The employer included the following in its response: "The claimant received the following remuneration:/Holiday Pay/ 423.20/ Lump Sum/ Allocated: N/ End Date: 7/29/2017." In response to a subsequent request for information, the employer provided an unintelligible document with the heading 2017 Holiday Pay. The document set forth dollar amounts and other numbers without headings or a legend to indicate the meaning or significance of the various numbers. The Workforce Development representative assumed the information provided by the employer indicated that the employer had provided Mr. Altman with \$423.20 in *vacation pay* to be apportioned to the benefit week that ended July 29, 2017. The Workforce Development representative then added the \$423.20 amount to the \$208.00 wages Mr. Altman reported for the week that ended July 29, 2017 to reach the conclusion that Mr. Altman was ineligible for unemployment insurance benefits for the week that ended July 29, 2017 and that he had been overpaid \$383.00 in benefits for that week.,

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(7) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Paid Time Off (PTO) is treated as vacation pay and is fully deductible from unemployment insurance benefits. See Iowa Administrative Code rule 871-24.13(3)(b) and 871-24.16. Unless otherwise specified by the employer in the response to the notice of claim, the amount of the vacation pay shall be converted by Workforce Development to eight hours for a normal workday and five workdays for a normal workweek.

The evidence in the record fails to establish that Mr. Altman received vacation pay that was deductible from his unemployment insurance benefits for the week that ended July 29, 2017 or any other week of the claim. The employer did not participate in the appeal hearing and, thereby, failed to present any evidence to establish that Mr. Altman received any remuneration from the employer in connection with the separation from employment other than the regular wages that Mr. Altman reported when he made his weekly claim for the week that ended July 29, 2017. The cryptic information the employer included regarding holiday pay in the timely electronic protest and subsequent supplemental document was insufficient proof that Mr. Altman received vacation pay that was deductible from his unemployment insurance benefits.

**DECISION:**

The August 22, 2017, reference 04, decision is reversed. The claimant did not receive vacation pay that was deductible from his unemployment insurance benefits for the week that ended July 29, 2017 or any other week of the claim. The claimant was eligible for benefits credited to him for the week that ended July 29, 2017, provided he met all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs