

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TROY L VERHELST
Claimant

NORTH IOWA WOOD PRODUCTS INC
Employer

APPEAL 17A-UI-01966-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/16
Claimant: Respondent (5)

Iowa Code § 96.5(7) – Receipt of Vacation Pay/PTO

STATEMENT OF THE CASE:

The employer filed an appeal from the February 17, 2017, (reference 03) unemployment insurance decision that allowed reduced benefits to the claimant for the week ending December 31, 2016, due to the receipt of vacation pay. The parties were properly notified about the hearing. A telephone hearing was held on March 15, 2017. The claimant participated personally. The employer participated through Julie Haugen, office manager. Employer Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant receive vacation pay or PTO at separation?
Is that amount deductible from benefits, and if so, for what period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed full-time as a production worker. The claimant was temporarily laid off December 25 through 31, 2016. He received no vacation pay, or wages. The employer paid him \$88.00 representing 8 hours of work, based upon a rate of pay at \$11.00 per hour. The employer inadvertently reported the claimant received vacation pay in the amount of \$88.00 when responding to his claim for benefits. The claimant has a weekly benefit amount of \$172.00. The claimant was paid \$127.00 in unemployment insurance benefits for the week ending December 31, 2016.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not receive vacation pay. The holiday pay received was correctly deducted.

Payments for unused vacation pay must be deducted from unemployment insurance benefits under the following conditions: (1) the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies within the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5-7.

The undisputed evidence is the claimant was not paid vacation pay, but rather holiday pay for the week ending December 31, 2016, while on temporary layoff. The employer's designation of the holiday as vacation pay was due to clerical error. The claimant did receive holiday pay in the amount of \$88.00, representing eight hours of work, at a rate of pay of \$11.00 per hour.

871 IAC 24.13(2)a provides:

- (2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):
- a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

The Unemployment Insurance Handbook at page 20 provides:

PARTIALLY DEDUCTIBLE FROM THE BENEFIT PAYMENT BASED ON A FORMULA	
An individual may earn up to 25 percent of their WBA before the benefit payment is reduced. Earnings higher than 25 percent reduce the benefit payment. <ol style="list-style-type: none">1. Wages2. Holiday pay3. Stand-by pay4. Tips, gratuities, bonuses, commission and incentive pay	Example: An individual's WBA is \$400 and they earn \$370. <ol style="list-style-type: none">1. 25% of \$400 is \$100. \$100 is not deducted from the WBA.2. \$370 - \$100 = \$270. The remaining \$270 is deducted from the WBA.3. \$400 - \$270 = \$130.4. \$130 is the payment amount for the week.

The claimant's weekly benefit amount (WBA) is \$172.00. He earned \$88.00 in holiday pay. 25% of his weekly benefit amount is \$43.00, so \$43.00 is not deductible from the WBA. \$88.00-\$43.00= \$45.00. The remaining \$45.00 is deducted from the WBA. \$172.00-\$45.00 = \$127.00. The claimant's payment for the week of \$127.00 is correct. Therefore, the administrative law judge concludes the claimant was not paid vacation pay, but did receive holiday pay, which has been properly calculated into his payment for unemployment insurance benefits for the week ending December 31, 2016.

DECISION:

The February 17, 2017, (reference 03) decision is modified with no change in effect. The claimant did not receive vacation pay. The claimant did receive holiday pay, which has been correctly deducted from benefits.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs