

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA C TOBIN
Claimant

APPEAL NO. 08A-UI-08280-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL KITCHEN SOLUTIONS INC
Employer

**OC: 07/13/08 R: 02
Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Alicia C. Tobin (claimant) appealed a representative's September 15, 2008 decision (reference 03) that concluded she was not eligible to receive benefits for the week ending July 19, 2008, because she received vacation pay for this week from Cargill Kitchen Solutions, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive vacation pay from the employer that should be attributed to the week ending July 19, 2008?

FINDINGS OF FACT:

The claimant's last day of work for the employer was July 8, 2008. The employer paid the claimant 120 hours of vacation pay or \$1,794.00. The claimant received the vacation payment on July 21, 2008.

The claimant started working for another employer on June 9, 2008. This employment ended on July 15, 2008.

The claimant took the payroll stub she received with her vacation pay to her local workforce office. The representative told the claimant she did not have to report the vacation payment because the employer was not her last employer. The administrative record reveals that when the employer timely responded to the notice of claim, the employer indicated the \$1,794.00 vacation pay should be attributed to the week ending July 19, 2008.

REASONING AND CONCLUSIONS OF LAW:

Vacation pay must be deducted from unemployment insurance benefits: (1) if 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) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the specific dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be applied to the first five working days after the claimant's last day of work. Iowa Code § 96.5-7, 871 IAC 24.16.

The administrative record indicated the employer designated the vacation payment should be attributed to the week ending July 19, 2008. This means the claimant is not eligible to receive benefits for the week ending July 19 because she received vacation pay that exceeded her weekly benefit amount.

The fact the claimant's employment with the employer ended five days before another employment separation is not relevant. The claimant is not eligible to receive benefits for the week ending July 19 because she received vacation pay that exceeded her weekly benefit amount.

DECISION:

The representative's September 15, 2008 decision (reference 03) is affirmed. The claimant is not eligible to receive benefits for the week ending July 19, 2008, because the vacation pay she received from the employer must be attributed to this week and her vacation pay exceeds her weekly benefit amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css