

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA C MILLER
Claimant

APPEAL NO. 16A-UI-10807-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEWSPAPER HOLD INC
Employer

OC: 05/08/16
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 26, 2016, reference 01, which reduced his unemployment insurance benefits for the week ending July 30, 2016 upon a finding the claimant was receiving or entitled to receive vacation pay which is deductible from his unemployment insurance benefits. After due notice was provided, a telephone hearing was held on Wednesday, October 19, 2016. Claimant participated. Although duly notified, there was no participation by the employer.

ISSUE:

The issue is whether the claimant received vacation pay and if so, whether the amount was deductible from his unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Joshua Miller was employed by Newspaper Hold, Inc. and that the claimant was required to take a mandatory one-week layoff without pay for the week of July 24, 2016 through July 30, 2016. Mr. Miller did not receive any vacation pay from Newspaper Hold, Inc. for that week. Mr. Miller had received some vacation pay for the preceding week and had used the vacation pay to offset a reduction in hours for that week and had not claimed unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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.

In the case at hand, the claimant testified that he had not received vacation pay for the week ending July 30, 2016. The claimant had been off work due to a mandatory furlough from work for a one-week period and had not been paid by the employer for the week ending July 30, 2016. Mr. Miller was laid off for a one-week period and resumed work after being off for the

one-week mandatory furlough without pay which ended July 30, 2016. Mr. Miller had used some vacation pay the preceding week to make up for a reduction in hours but had not claimed unemployment insurance benefits for that week.

The administrative law judge concludes based on the claimant's testimony and the statement from the employer (See Claimant's Exhibit A) that the claimant had not received nor was he entitled to vacation pay for the week ending July 30, 2016, a week that he had been laid off work without pay by his employer. Claimant is eligible to receive unemployment insurance benefits without a reduction for vacation pay for the week ending July 30, 2016.

DECISION:

The representative's decision dated September 26, 2016, reference 01, is reversed. Claimant did not receive and was not entitled to receive vacation pay for the week ending July 30, 2016 and is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs