

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYLE G MCGLADE
Claimant

APPEAL NO. 13A-UI-02423-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ECHO GROUP INC
Employer

**OC: 01/20/13
Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay
871 IAC 24.13(1) – Deductible Payments/Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated February 26, 2013, reference 02, that disqualified him for the two weeks ending February 2, 2013 due to receiving vacation pay. A hearing was held on March 27, 2013. The claimant participated. Deb Moss, HR Director, participated for the employer.

ISSUE:

The issue is whether the claimant received deductible vacation pay.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer on January 18, 2013. The claimant had 88 hours of unused accumulated vacation. The employer protested claimant's claim as to the unpaid accumulated vacation for the period from January 21 thru January 30 in the amount of \$1,364.00. The value of the 88 hours of accumulated vacation is based on claimant's final pay rate of \$15.50 an hour. The employer paid the vacation pay with claimant's final paycheck for the period ending January 19.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The administrative law judge concludes claimant is disqualified from receiving benefits for the two weeks ending February 2, 2013 due to receiving deductible vacation pay as protested and paid by the employer.

The employer paid claimant his unused accumulated vacation hours (88 x \$15.50 = \$1,364) in a lump sum with his final pay period ending January 19. It paid the vacation pay in conjunction

with his employment separation. No portion of it was paid because claimant took vacation during the two-week period up to his last day on January 18.

Since the employer protested the vacation pay-out of 88 hours that covers a two-week period in conjunction with the January 18 employment separation it is applied from the effective date of the UI claim (January 20) until exhausted. The vacation pay-out is exhausted with the week ending February 2 that is the disqualification period.

DECISION:

The decision of the representative dated February 26, 2013, reference 02, is affirmed. The claimant is disqualified and ineligible for benefits for the two weeks ending February 2, 2013 due to receiving vacation pay from his employer.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs