

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHEN D HARWOOD**  
Claimant

**APPEAL NO. 10A-UI-16866-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOUSBY MACK INC**  
Employer

**OC: 06/28/09**  
**Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay

**STATEMENT OF THE CASE:**

The claimant appealed a representative's decision dated December 1, 2010, reference 01, that disqualified him for the four weeks ending July 25, 2009 due to receiving vacation pay. A hearing was held on January 25, 2011. The claimant participated. The employer elected not to participate. Claimant Exhibit A was received as evidence.

**ISSUE:**

The issue is whether the claimant received vacation pay.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant last worked for the employer one and one-half hours earning gross wages of \$28.51 on June 29, 2009 when he was laid off. The claimant's pay rate was \$19.01 an hour and he worked a five-day workweek, Monday through Friday.

When the employer received claimant's notice of claim, it protested by stating it paid accumulated gross vacation pay of \$3,013.09 that applied to a period from June 30 thru July 29, 2009. The claimant provided a pay warrant showing that he was paid 78.5 hours of vacation during the first two weeks of his layoff period, and the remainder during the subsequent two weeks. Since the claimant's pay rate was \$19.01 an hour, he earned gross pay of \$152.08 each day and/or \$760.40 for a five-day workweek. The claimant's weekly benefit amount is \$389.00.

**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 not eligible for receiving benefits for the four week period ending July 25, 2009 due to receiving vacation pay.

Since the employer properly protested the payment of vacation pay by listing the amount and designating the period to which it applies, it must be considered as an eligibility for more than one week. For the week ending July 4, the \$28.51 regular pay (June 29) is added to 4.8 days of vacation pay (\$731.89) for a weekly total of \$760.40 that is equivalent to what the claimant's gross pay had he worked that week. The remaining vacation pay (\$2,281.20) is applied weekly (five-day workweek), \$760.40, for the weeks ending July 11, 18 and 25 until exhausted.

**DECISION:**

The decision of the representative dated December 1, 2010, reference 01, is affirmed. The claimant is not eligible for benefits for the four weeks ending July 25, 2010 due to receiving vacation pay.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/css