

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN S CARLISLE**  
Claimant

**APPEAL NO. 11A-UI-03104-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACH FOOD CO INC**  
Employer

**OC: 08/16/09**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(7) – Vacation Pay

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 8, 2011 determination (reference 02) that held he was not eligible to receive benefits from August 16 through September 26, 2009, because the vacation pay he received should be attributed to these weeks. The claimant participated in the hearing. Cyndi Mapes, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits for these six weeks because vacation pay he received must be attributed to these weeks.

**ISSUE:**

What week or weeks should the claimant's vacation pay be attributed to?

**FINDINGS OF FACT:**

The claimant's last day of work for the employer was August 14, 2009. He established a claim for benefits during the week of August 16, 2009. The claimant was found eligible to receive a maximum of \$402.00 a week.

When the claimant's employment ended, he signed an agreement that he had no legal recourse against the employer. As a result of signing this agreement, the employer paid him a lump sum payment of over \$13,000. The claimant also received 235.15 hours of vacation pay, or a total of \$6,557.06. If the claimant had not signed the settlement agreement, he still would have received his vacation pay.

When the employer timely completed the notice of claimant, the employer reported the claimant's vacation pay was attributed to August 17 through September 24, 2009. The claimant received the vacation pay and his lump sum settlement agreement pay in one check.

**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 dates to which vacation pay applies by 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).

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable as August 17 through September 24, 2009. This means the claimant is not eligible to receive benefits for the weeks ending August 22 through September 26, 2009, because the vacation pay he received these weeks exceeds his weekly benefit amount of \$402.00.

**DECISION:**

The representative's March 8, 2011 determination (reference 02) is affirmed. The vacation pay the claimant received must be attributed to the weeks ending August 22 through September 26, 2009. The claimant is not eligible to receive benefits for these weeks, because his vacation pay attributed to each week exceeds his weekly benefit amount.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw