

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARMALA C PITT

Claimant

APPEAL NO. 11A-UI-01902-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTWOOD INDUSTRIES INC

Employer

OC: 06/14/09

Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated February 8, 2011, reference 04, that she was not eligible for benefits for the two weeks ending June 27, 2009 due to receiving vacation pay. A hearing was held on Des Moines, Iowa on April 27, 2011. The claimant, and her husband, John, participated. The employer did not participate. Department Exhibit 1 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 on June 15, 2009, and she filed an unemployment claim effective June 14. The employer protested claimant's claim by reporting vacation pay of \$1,445.00 to apply for a period from June 15 to July 1, 2009. The employer did not pay the vacation pay to claimant until after July 1.

Claimant did not believe she would receive her accumulated vacation so she did not report it. Claimant reported earnings of \$116.00 for the week ending June 20 and she was paid a benefit of \$335.00. She reported earnings of \$140.00 for the week ending June 27 and she was paid \$311.00. She reported no earnings the week ending July 4, and was paid her weekly benefit amount (WBA) of \$361.00.

A department representative reviewed claimant's claim against the employer reported vacation pay. The representative determined the gross vacation pay divisible by eight-hour working days was 13 days at the rate of \$111.15 each day. Five days of vacation (\$555.75) was attributed to the week ending June 20, and five days to the week ending June 27. When the vacation pay was added to claimant reported earnings (\$116.00 & 555.75) for these weeks, she had excessive earnings that did not entitle her to any benefit for these weeks. The remaining three days of vacation (\$333.45) earnings are applied to the week ending July 4, and since this

amount is less than her WBA, she was entitled to a partial benefit of \$28.00 rather than the \$361.00 paid to her.

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.

The administrative law judge concludes claimant the not eligible for benefits for the two weeks ending June 27, 2009 due to receiving vacation pay.

Although the employer reported the vacation pay after the period claimant claimed for benefits, it did properly protest the amount and designate it to the period it should apply. Claimant is entitled to a partial benefit the week ending July 4.

DECISION:

The decision of the representative dated February 8, 2011, reference 04, is affirmed. The claimant is not eligible to receive benefits the two weeks ending June 27, 2009 due to receiving vacation pay.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs