

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY J DEMERS
Claimant

APPEAL NO: 10A-UI-01467-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 04/05/09
Claimant: Appellant (2/R)**

Section 96.5-7 – Vacation/Settlement Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's January 25, 2010 decision (reference 01) that held him overpaid \$403.00 in benefits for the week ending July 11, 2009, because he had not correctly reported vacation pay he received from Hog Slat, Inc. for this week. A telephone hearing was scheduled for March 6, 2010. The claimant contacted the Appeals Section on February 8 and requested that a decision be made based on information in the administrative record. This request was granted. Based on the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant receive vacation pay that should be attributed to the week ending July 11, 2009 or did he receive a settlement payment?

Has the claimant been overpaid \$403.00 in benefits he received for the week ending July 11, 2009?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of April 5, 2009. He reopened his claim during the week of July 5, 2009. For the week ending July 11, 2009, he reported earning \$108.00 in wages. The claimant received partial benefits of \$293.00 for this week. The claimant received an additional \$25.00 from the government's economic stimulus program.

On July 24, 2009, the claimant received a gross payment of \$961.60 from his former employer. The employer characterized the payment as vacation severance. Before the claimant could receive this money, he had to sign a vacation severance agreement where he waived his right to any claims that could arise from his employment. The claimant signed this agreement on July 15, 2009. If the claimant had not signed the vacation severance agreement, his former employer would not have paid him \$961.60.

REASONING AND CONCLUSIONS OF LAW:

The vacation severance payment the claimant received on July 24, 2009 is not deductible from his benefits. While vacation pay must be deducted from a claimant's maximum weekly benefit amount, Iowa Code § 96.5-7, a payment after a separation that is conditioned upon execution of a release or waiver of claims is not "vacation pay" as contemplated by Iowa Code § 96.5-7. It is more aptly characterized as consideration given by the employer to the claimant for waiver of possible causes of action against the employer. The administrative record reveals the payment claimant received on July 24 was conditioned upon the claimant signing a release. Therefore, this payment cannot be considered vacation pay that would be deductible from the claimant's unemployment insurance benefits.

This means, the claimant is entitled to receive the \$403.00 in benefits he received for the week ending July 11, 2009. He has not been overpaid this amount.

DECISION:

The representative's January 25, 2010 decision (reference 01) is reversed. The vacation severance payment the claimant received is, in reality, a settlement payment that is not deductible from his benefits. The claimant has not been overpaid \$403.00 in benefits for the week ending July 11, 2009. This matter is remanded to the Claims Section because it appears this settlement payment was deducted for the weeks ending July 18 and 25, when no deduction should have been made.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw