

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY D WISSLEAD
Claimant

APPEAL NO. 11A-UI-02932-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROQUETTE AMERICA INC
Employer

**OC: 09/26/10
Claimant: Appellant (4)**

Iowa Code § 96.5(7) – Vacation Pay

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 3, 2011 determination (reference 02) that held him ineligible to receive benefits for the weeks ending December 4 and 11, 2010, because vacation pay should be attributed to these weeks. The claimant participated in the hearing. Hilary Carter, a human resource staffing specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the vacation is only attributed to the week ending December 11.

ISSUE:

For what week or weeks should the claimant's vacation payment be attributed?

FINDINGS OF FACT:

As the result of a labor dispute, the claimant became unemployed when he was locked out of work on September 28, 2010. He established a claim for benefits during the week of September 26, 2010. In accordance with the union contract, the claimant receives holiday pay even when he is locked out. In the contract, Thanksgiving Day is noted as a holiday.

On December 3, 2010, the employer issued the claimant a check for a gross payment of \$179.78. This check paid the claimant for eight hours of holiday pay for Thanksgiving on November 25. The claimant reported this payment during the week ending December 4, or the week in which he received the check. The employer also issued the claimant a check on December 10 for eight hours of floating holiday pay and 88 hours of vacation pay. The employer paid the claimant a gross payment of \$2,157.12 on December 10. When the claimant filed his weekly claim for the week ending December 11, he reported the December 10 payment.

The employer reported these payments to the Department in December and attributed 40 hours of payment for the week ending December 3, 40 hours of payment for the week ending December 10, and 8 hours of payment on December 13, 2010. The claimant filed weekly claims for the weeks ending November 27 through December 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

The easy question to address in this case is when holiday pay should be reported or attributed to. 871 IAC 24.13(2)a provides that holiday pay is considered a wage and is deductible from a claimant's weekly benefit amount just as wages are in 871 IAC 24.18. Since the union contract specifically states employees receive holiday pay for Thanksgiving Day and various other days, the claimant knew or should have known he would receive this holiday payment. Therefore, he is required to report holiday pay during the week in which the holiday occurred, not when paid. Holiday pay is treated no differently than wages. Wages are to be reported during the week earned, not paid. If holiday pay is not paid by the employer, the claimant may request an underpayment adjustment from the department. 871 IAC 24.13(2).

The holiday pay the claimant requested will be attributed the week ending December 4, 2010.

The harder question to answer is what week or weeks should a vacation payment be attributed when the employer has not timely notified the Department when there is a labor dispute that the employer may be obligated to make a vacation payment. The vacation payment law is confusing and in this case does not address the situation presented.

The law presumes the employer knows what vacation pay would be paid or owed at the time the employer receives the notice of claim. Iowa Code § 96.5(7) and 871 IAC 24.16(1). The employer receives a notice of claim shortly after the claimant establishes a claim for benefits. When an employer notifies the department within ten days of receiving a notice of claim that an amount of vacation pay, either paid or owed, is to be applied to a specific period, a sum equal to the wage of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation until the amount of the vacation pay is exhausted. 871 IAC 24.16(1). If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of extension before the extension period begins. 871 IAC 24.16(2).

The law that is most on point for this case is Iowa Code § 96.5(7)d. This statute states that if the employer has not timely designated the vacation period after receiving the notice of claim, the payment made by the employer to the claimant or an obligation to make a payment shall not be deemed wages for any period in excess of one week and such payment shall not be deducted from unemployment benefits for more than one week.

So, in plain English, what does this mean? When an employer does not timely indicate on a notice of claim potential vacation pay obligations, the fact the employer pays the claimant more than 40 hours of vacation pay can only be attributed to one week. Since the employer has no control on when a claimant receives a vacation pay when the payment is not directly deposited into a bank account, the date the claimant requested the vacation hours should be the week the vacation pay is attributed. Just as wages are to be reported when they are earned, vacation pay should be reported for the time period the employer becomes obligated to pay out the vacation pay.

The administrative law judge recognizes that the labor dispute put the employer in a difficult situation, but when the lockout occurred the employer could have timely reported vacation pay the employer could be obligated to pay if the claimant previously requested vacation for a certain time or would make a request to cash in vacation hours. Even though it is reasonable for the employer to provide the Department with information about vacation payments, there is **NO** basis in the law for doing this when the vacation pay obligation was not timely addressed by the employer when the employer received the notice of claim.

In this case, the claimant should have reported his Thanksgiving holiday pay during the week ending November 27, 2010, not the week ending December 4. The 88 hours of vacation the claimant requested must all be attributed to the week ending December 11, which the claimant has already done. Iowa Code § 96.5(7)d.

DECISION:

The representative's March 3, 2011 (reference 02) is modified in the claimant's favor. The vacation payment the employer issued on December 10, 2010, must all be attributed to the week ending December 11, 2010.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw