

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSELL SCHUELLER
Claimant

APPEAL NO. 19A-UI-06710-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JOHN DEERE CONSTRUCTION
EQUIPMENT**
Employer

OC: 07/21/19
Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Russell Schueller filed a timely appeal from the August 20, 2019, reference 03, decision that denied benefits for the week of July 21-27, 2019, based on the deputy's conclusion that Mr. Schueller received vacation pay for the week that was deductible from his unemployment insurance benefit eligibility for that week. After due notice was issued, a hearing was held on September 18, 2019. Mr. Schueller participated. Mark Onderick represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 19A-UI-06709-JTT and 19A-UI-06711-JTT. Department Exhibits D-1 through D-4 were received into evidence.

ISSUE:

Whether the claimant received vacation pay that was deductible from his unemployment insurance benefit eligibility for the week that ended July 27, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Russell Schueller established an original claim for unemployment insurance benefits that was effective July 21, 2019. Mr. Schueller received \$481.00 in benefits for the week that ended July 27, 2019. Mr. Schueller established his claim for unemployment insurance benefits in response to a temporary layoff from his full-time employment with John Deere. Mr. Schueller's last day worked before the shutdown was Friday, July 19, 2019.

On July 25, 2019, Iowa Workforce Development mailed a notice of claim to the employer at the employer's last-known address of record. The employer received the notice of claim in a timely manner. The notice of claim provided an August 5, 2019 deadline for the employer's response. The employer filed its response to the notice of claim on August 7, 2019. The employer noted on its response that the employer had paid \$1,227.12 in vacation pay to Mr. Schueller for the period of July 22, 2019 through July 28, 2019. Mr. Schueller did indeed receive the vacation pay referenced in the employer's late response to the notice of claim. Upon receipt of the employer's information regarding vacation pay, an Iowa Workforce Development Benefits

Bureau deputy apportioned the entire vacation pay amount to the benefit week that ended July 27, 2019 and concluded that Mr. Schueller was ineligible for benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(7) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 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" or paragraph "b", 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, not to exceed five workdays. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums equal or exceed the individual's weekly benefit amount. If the amount 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 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 five workdays 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.

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.

Iowa Admin. Code r. 871-24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

Mr. Schueller received the vacation pay in question. Because Mr. Schueller's last day work before the shutdown was Friday, July 19, 2019, the first workday following the layoff was Monday, July 22, 2019. The employer's responded late to the notice of claim. Mr. Schueller filed a weekly claim for the first week following the layoff. For all these reasons, the Benefits Bureau correctly apportioned the entire \$1,227.12 in vacation pay to the benefit week that ended July 27, 2019. Because apportioned vacation pay equaled or exceeded the \$481.00 weekly unemployment insurance benefit amount, it reduced Mr. Schueller's benefit eligibility for that week to zero. Based on the receipt of vacation pay, Mr. Schueller was not eligible for benefits for the week that ended July 27, 2019.

DECISION:

The August 20, 2019, reference 03, decision is affirmed. The claimant received vacation pay that was deductible from his unemployment insurance benefit eligibility for the benefit week that ended July 27, 2019. The apportioned vacation pay equaled or exceeded the claimant's weekly benefit amount. The claimant was not eligible for benefits for the week that ended July 27, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs