

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY D PIERCE
Claimant

APPEAL NO. 10A-EUCU-01153-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

POOLES TRUCK SERVICE INC
Employer

OC: 06/07/09
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated December 2, 2010, reference 08, that held he was ineligible for benefits for the two weeks ending June 20, 2009 due to receiving vacation pay. A hearing was held on January 26, 2011. The claimant participated. Judy Poole, Secretary/Treasurer, participated for the employer.

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 6, 2009, and he filed an unemployment claim effective June 7. The claimant's weekly benefit amount is \$365 and he is entitled to an additional \$25 per week for an extended benefit. The employer protested the claim by designating vacation pay of \$940 for a period of ten days, June 8 to June 19.

When claimant last worked for the employer, he was earning \$11.75 an hour for a Monday thru Friday, 40-hour workweek. Every other week, claimant would work an additional day, eight hours (Saturday), for which he was paid overtime. The employer computes its vacation entitlement based on length of service. Claimant had earned two weeks of vacation by April 2009, \$940 (\$11.75 x 40 hours x 2 weeks), and it paid him this amount (less taxes) on June 9.

The claimant reported all of the vacation pay when claiming for benefits the week ending June 13, and he received no benefit due to excessive earnings. The claimant received his regular benefit of \$365 plus \$25 for the subsequent week ending June 20 when he reported no earnings.

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 is not eligible to receive benefits the week ending June 20, 2009 due to receiving vacation pay from his employer.

The employer properly protested the claimant's claim listing \$940 of vacation pay to apply to a two-week period ending June 19. The protest negates the law provision that vacation pay is deductible for only one-week. Even if the claimant had properly reported his vacation pay by applying to each week (\$470 per week), it would have been excessive earnings (more than \$390), and he would not have received any benefit for either week.

DECISION:

The decision of the representative dated December 2, 2010, reference 08, is affirmed. The claimant is not eligible for benefits for the week ending June 20, 2009 due to receiving vacation pay.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs