

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH E SWANSON
Claimant

APPEAL NO: 14A-UI-10389-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HYPRO INC
Employer

OC: 08/10/14
Claimant: Appellant (4)

Iowa Code § 96.5(7) – Vacation/PTO Pay

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 30, 2014 (reference 01) determination that held him ineligible to receive benefits for the weeks ending August 16 and 23, 2014 because vacation/PTO pay was attributed to these weeks. The claimant participated at the October 28 hearing. The employer did not respond to the hearing notice or participate at the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is eligible to receive benefits for the week ending August 16 but is not eligible to receive benefits for the weeks ending August 23 and 30, 2014.

ISSUE:

What week or weeks is the claimant's vacation/PTO pay attributed?

FINDINGS OF FACT:

The employer temporarily shut down part of its plant the week of August 10, 2014. Employees understood they were on a short-term lay off for one week. The employer gave employees the option of taking vacation/PTO or receiving unemployment insurance benefits for this week.

Some employees, including the claimant, elected to establish a claim for benefits during the week of August 10. The claimant established a claim during the week of August 10, 2014. His maximum weekly benefit amount is \$416. He filed a claim for the week ending August 16, 2014. The claimant did not report any wages because he was on a layoff and did not receive any vacation/PTO pay or earn any wages this week.

When the claimant returned after the layoff, he had no idea his last day of work would be August 27, 2014. On August 27 the employer informed the claimant his job had been eliminated. On August 27 the claimant received a check indicating it was for the payroll period August 18 through 24. This check paid the claimant for 40 hours of work and also 72 hours of PTO. The claimant received another check on August 29. This check paid the claimant for 32 hours of work (Claimant Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation payment or becomes obligated to make a payment, the vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not timely designate the dates to which vacation pay applies, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code § 96.5(7), 871 IAC 24.16.

Excused personal leave, also referred to as casual pay, random pay, or PTO, is a personal leave with pay granted to an employee for absence from the job because of personal reasons. It is treated as vacation pay and is fully deductible. 871 IAC 24.16.

This case is unusual in that the claimant was on a temporary layoff the week of August 10. The employer gave the claimant and other employees the option of filing a claim for benefits or taking PTO time. The claimant elected to file a claim for benefits. He did not receive a payroll check for the layoff the week. The claimant is eligible to receive benefits for the week ending August 16 because he was on a temporary layoff.

The employer paid the claimant 72 hours of PTO time for the payroll period August 18 through 24. The employer attributed the PTO pay the claimant to the week ending August 23. The claimant is not eligible to receive benefits for the week ending August 30 because he received \$472 in wages for this week, which exceeds his maximum weekly benefit amount (Claimant Exhibit A).

DECISION:

The representative's September 30, 2014 (reference 01) determination is modified. The claimant's PTO payment is attributed to the week ending August 23, 2014; the week in which the employer attributed the PTO pay. The claimant is eligible to receive benefits for the week ending August 16, 2014 because he was on a temporary layoff. The claimant is not eligible to receive benefits for the week ending August 30 because he earned wages that exceed his maximum weekly benefit amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can