

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN J WELSH
Claimant

APPEAL NO. 06A-UI-09975-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLY FAMILY CATHOLIC SCHOOLS
Employer

**OC: 08/27/06 R: 04
Claimant: Appellant (2)**

Section 96.3(7) – Recovery of Overpayments
Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Kevin Welsh filed an appeal from a representative's decision dated October 4, 2006, reference 03, which held he had been overpaid job insurance benefits for the week ending September 9, 2006 because of his receipt of vacation pay. After due notice was issued, a hearing was held by telephone on October 26, 2006. Mr. Welsh participated personally and Exhibit A was admitted on his behalf. The employer participated by Roger Slattery, Payroll Administrator.

ISSUE:

At issue in this matter is whether Mr. Welsh had vacation pay that was deductible from his job insurance benefits for the week ending September 9, 2006.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Welsh's last day of work for Holy Family Catholic Schools was August 21, 2006. During the payroll period that ran from August 16 through August 31, Mr. Welsh worked four days for a total of 32 hours. On the paycheck for that period, he was paid for a total of 90.67 hours. All hours above 32 were considered vacation hours. He has not received any subsequent payments from the employer. Mr. Welsh's wages compute to an hourly rate of \$14.69.

Mr. Welsh filed a claim for job insurance benefits effective September 27, 2006. In connection with the claim, the employer reported that he had been paid the gross amount of \$1,116.44 as vacation pay. The employer designated the vacation pay to cover the period from August 23 through September 5, 2006.

Mr. Welsh reported vacation pay in the amount of \$500.00 when he called in his claim for the week ending September 2, 2006. Workforce Development has issued a decision dated September 18, 2006, reference 02, which denied benefits for the week ending September 2 because of the receipt of vacation pay. Mr. Welsh does not dispute that determination.

REASONING AND CONCLUSIONS OF LAW:

Mr. Welsh appealed a decision that held he had been overpaid job insurance benefits in the amount of \$223.00 for the week ending September 9, 2006. The crux of the issue is whether he received the amount of vacation pay the employer reported to Workforce Development. The vacation pay was paid on the check dated August 31, 2006. The check also included pay for time worked. Because Mr. Welsh worked 32 of the 90.67 hours for which he was paid, only 58.67 of those hours would be for vacation pay. Therefore, he only had vacation pay for 7.3 days.

One day of vacation pay is attributed to each day following the last day worked until the pay is exhausted. In Mr. Welsh's case, the 7.3 days of vacation pay would be exhausted by no later than August 31. Therefore, the pay would be deducted for the week ending September 2, 2006. Workforce Development has already disqualified Mr. Welsh from receiving benefits for the week ending September 2 because of his vacation pay. The administrative law judge concludes that there is no basis for further disqualification. Accordingly, it is concluded that Mr. Welsh has not been overpaid for the week ending September 9, 2006.

DECISION:

The representative's decision dated October 4, 2006, reference 03, is hereby reversed. Mr. Welsh has not been overpaid job insurance benefits for the week ending September 9, 2006, as he did not have vacation pay to be deducted for that week.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw