

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABBIE J STOLTE**

Claimant

**APPEAL NO. 08A-UI-06128-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JUNGS TAE KWON DO ACADEMY INC**

Employer

**OC: 04/27/08 R: 03  
Claimant: Respondent (1)**

Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

The employer, Jungs Tae Kwon Do Academy, Inc. (Jungs), filed an appeal from a decision dated June 5, 2008, reference 03. The decision allowed benefits to the claimant, Abbie Stolte. After due notice was issued, a hearing was held by telephone conference call on July 23, 2008. The claimant participated on her own behalf. The employer participated by Payroll Manager Bridget McMenomy.

**ISSUE:**

The issue is whether the claimant received vacation pay and whether the employer notified Iowa Workforce Development of the amount in a timely manner.

**FINDINGS OF FACT:**

Abbie Stolte filed a claim for unemployment benefits with an effective date of April 27, 2008. Notice of the claim was mailed to Jungs on May 5, 2008. Payroll Manager Bridge McMenomy submitted the protest indicating the claimant was still employed because her employment did not end until May 4, 2008. The employer does not protest the payment of unemployment benefits to Ms. Stolte but appealed the decision stating its reporting of her vacation pay was not timely.

The employer did submit a handwritten letter on May 28, 2008, to “clerk #5” on May 28, 2008, indicating Ms. Stolte had received 65.97 hours in vacation pay and 23.41 hours of sick time. However, the claimant had properly reported the vacation pay to Iowa Workforce Development when she filed her claims for the weeks ending May 10 and 17, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 employer did not timely submit the report of Ms. Stolte's receipt of vacation pay. However, as the claimant had already reported all the vacation pay she received, her weekly benefit amount was recalculated accordingly.

**DECISION:**

The representative's decision of June 5, 2008, reference 03, is affirmed. The employer did not timely report the claimant's receipt of vacation pay. There is no change in the amount of benefits to the claimant as she had already reported those amounts when she filed her weekly claims.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css