

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN D BRYAN
Claimant

APPEAL NO: 10A-UI-03914-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

OC: 04/26/09
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's March 5, 2010 decision (reference 03) that held she was not eligible to receive benefits until July 4, 2009, because the vacation pay she received from the employer was attributable to weeks ending May 2 through July 4, 2009. A telephone hearing was held on April 16, 2010. The claimant participated in the hearing. Mallory Schon, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive vacation pay from the employer that should be attributed to the weeks ending April 26 through July 4, 2009?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of April 26, 2009. The claimant's last day of work for the employer was January 23, 2009. The employer paid the claimant her wages through April 30, 2009. The claimant earned \$20.38 an hour and worked 40 hours a week.

When the claimant's employment ended she had 349 hours of vacation pay accumulated. This amounts to vacation payment of \$7,112.62.

When the employer responded to the notice of claim, the employer reported the claimant's vacation pay should be attributed to May 1 through July 1, 2009. The claimant reported her vacation pay as a lump sum payment for the week ending May 2, 2009. The claimant received the vacation payment as a lump sum.

REASONING AND CONCLUSIONS OF LAW:

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 designate the dates to which vacation pay applies by the ten-day deadline, 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.

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable, May 1 through July 1, 2009. There is nothing unreasonable about this designation, and the claimant is, therefore, ineligible for unemployment insurance benefits through the week ending July 4, 2009.

Unfortunately, the way the law is written requires Workforce Advisors to instruct claimants who receive vacation pay to report it all during the first week because there is no way of knowing in advance whether the employer will make the designation of vacation pay allowed by the law. This creates a situation where claimants are commonly determined overpaid benefits.

The facts reveal the claimant did not understand the employer would designate her vacation to cover May 1 through July 1, 2009. Since the claimant received three days of vacation pay during the week ending July 4, she is not eligible to receive benefits because the vacation pay attributed to this week is \$484.95 exceeds her weekly benefits amount of \$315.00.

DECISION:

The representative's March 5, 2010 decision (reference 03) is affirmed. The vacation pay the claimant received must be attributed to May 1 through July 1, 2009. This means she is not eligible to receive unemployment until July 5, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css