

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L PICKART
Claimant

APPEAL NO. 10A-UI-04340-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

1ST AVENUE CHRYSLER INC
MICKEY CHRYSLER DODGE
Employer

OC: 05/17/09
Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Terry Pickart filed a timely appeal from the March 16, 2010, reference 03, decision that denied benefits for the two-week period ending July 4, 2009 based on an Agency conclusion that he had received vacation pay deductible from those weeks. After due notice was issued, a hearing was held on June 14, 2010. Mr. Pickart participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-04343-JTT. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant received vacation pay that is deductible from his unemployment insurance benefits.

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Terry Pickart was employed by Mickey Chrysler Dodge and a full-time parts salesperson until June 2, 2009, when he was permanently laid off. Mr. Pickart last performed work for the employer on June 1 and 2, 2009. These were a Monday and Tuesday. Mr. Pickart's final wage was \$11.00 per hour plus commission on the parts he sold. At the time Mr. Pickart separated from the employment, he had accrued 24 days or \$2,112.00 in vacation pay benefits that he had not yet used. The employer paid this amount to Mr. Pickart along with his final wages.

Mr. Pickart had erroneously established a claim for unemployment insurance benefits that was effective May 17, 2009. Mr. Pickart was still in his full-time employment at that time. On May 19, 2009, Workforce Development had mailed a notice of claim to the employer with a May 29, 2009 deadline for the employer's protest. The employer filed a protest on May 22, 2009, and asserted that Mr. Pickart was still employed full time. The employer did not provide any information regarding vacation pay because Mr. Pickart had not yet separated from the employment.

After Mr. Pickart erroneously established an premature claim for benefits, he realized his error and waited until the week ending June 27, 2009 to reopen the claim and start claiming benefits. Mr. Pickart delayed reopening the claim for the period he thought would be affected by the vacation pay, but miscalculated the amount of vacation pay he would receive. The Agency calculated Mr. Pickart's weekly unemployment insurance benefits to be \$356.00. For the five-week period of June 21, 2009 through July 25, 2009, Workforce Development issued regular weekly benefits to Mr. Pickart in the gross amount of \$356.00. For each of those weeks, the Agency also disbursed an additional \$25.00 in federal stimulus benefits. Mr. Pickart's eligibility for the \$25.00 stimulus benefits was contingent upon him being eligible for the regular benefits.

After Mr. Pickart's last day of employment on June 2, 2009, the employer filed vacation pay information with Workforce Development on June 12, 2009. This was within ten days of Mr. Pickart's separation from the employment. The employer correctly stated the amount of vacation pay as \$2,112.00. The employer designated the period of June 3, 2009 through July 6, 2009 as the period to which it wanted the vacation pay to be applied when determining Mr. Pickart's eligibility for unemployment insurance benefits.

A Workforce Development representative took the information provided by the employer and apportioned the vacation pay accordingly. For the week ending June 6, 2009 the Workforce representative apportioned three days of vacation, \$264.00. This amount, combined with the \$176.00 in regular wages Mr. Pickart received for his work on June 1 and 2, totaled \$440.00. For the four weeks ending June 13, 20, 27, and July 4, 2009, the Workforce representative apportioned five days of vacation pay benefits, \$440.00. The Workforce representative apportioned the remaining day of benefits, \$88.00 to July 6, 2009, which fell within the benefit week that ended July 11, 2009.

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 notice of claim was mailed to the employer prior to the separation date with a deadline for response that was prior to the separation date. Pursuant to the instructions on the notice of claim, there would have been no reason for the employer to include vacation pay to be applied after the last day worked because Mr. Pickart had not worked his last day. Within ten days of Mr. Pickart's separation from the employment the employer filed notice that Mr. Pickart had separated from the employment, provided information regarding the last day worked along with the amount of vacation pay and the period to which it was to be applied. The evidence indicates that the employer's designation of the period to which vacation pay benefits should be applied was timely and controls the apportionment of vacation pay. See 871 IAC 24.1(85). The Workforce Development representative correctly allocated the correct amount of vacation pay to the appropriate period designated by the employer.

Mr. Pickart was ineligible for benefits for the weeks ending June 6, 2009 because the allocated vacation pay, \$264.00, plus his regular wages for that week, \$176.00, together exceeded his week unemployment insurance benefit amount. Mr. Pickart was ineligible for benefits for the weeks ending June 13, 20, 27, and July 4, 2009 because the allocated vacation pay amount, \$440.00, exceeded his week unemployment insurance benefit amount. The \$88.00 in vacation

pay allocated to the week ending July 11, 2009, was deductible from Mr. Pickart's unemployment insurance benefits for that week.

Because Mr. Pickart did not claim benefits for the weeks ending June 6, 13 and 20, 2009, the allocation of vacation pay benefits to those weeks did not generate an overpayment amount for those weeks.

Because Mr. Pickart had received regular benefits of \$356.00 and federal stimulus benefits of \$25.00 for the weeks ending June 27 and July 4, 2009, and because the allocated vacation pay made him ineligible for benefits for those weeks, Mr. Pickart was overpaid \$381.00 in unemployment insurance benefits for each of those weeks.

Because Mr. Pickart had received regular benefits of \$356.00 for the week ending July 11, 2009, and because the \$88.00 in vacation pay allocated to that week was deductible from his unemployment insurance benefits, Mr. Pickart was overpaid \$88.00 for the week ending July 11, 2009.

The total overpayment of benefits for the three-week period of June 21 through July 11, 2009, was \$850.00.

Mr. Pickart has an erroneous assumption about how the law concerning the deductibility of vacation pay from unemployment insurance benefits operates. Despite that, the administrative law judge must follow the applicable Iowa law rather than abandon the law to craft an outcome that would conform to Mr. Pickart's erroneous understanding.

DECISION:

The Agency representative's March 16, 2010, reference 03, decision is affirmed. The claimant received vacation pay benefits that were deductible from his unemployment insurance benefits. The Agency correctly allocated the vacation pay benefits based on timely information received from the employer. The claimant was not eligible for benefits for the two-week period ending July 4, 2009 due to receipt of vacation pay deductible from those weeks. In addition, \$88.00 in vacation pay was correctly deducted from the claimant's benefits for the week ending July 11, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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