

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA K ST JOHN
Claimant

APPEAL NO: 09A-UI-15425-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUDER INC
Employer

OC: 04/05/09
Claimant: Appellant (3/R)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed a representative's October 6, 2009 decision (reference 02) that concluded she was not eligible to receive benefits for the week ending April 14, 2009, because she received vacation pay from the employer for this week. A telephone hearing was held on December 3, 2009. The claimant participated in the hearing. Sandy Lafoon, the human resource representative, 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:

To what week should the claimant's pay be attributed?

FINDINGS OF FACT:

The claimant's last day of work for the employer was April 6, 2009. She established a claim for benefits during the week of April 5, 2009. On the notice of claim form the employer completed, the employer's payroll employee reported the claimant's severance pay, \$1,808.00, was attributed to April 7 through 17, and her vacation pay, \$ 1,004.00, was attributed to April 20 through 24, 2009

The claimant filed claims for the weeks ending April 11 and 18. She reported she received more in vacation and/or severance pay these weeks than her maximum weekly benefit amount of \$389.00. The claimant did not receive any benefits for the weeks ending April 11 and 18.

The claimant filed a claim for the week ending April 25. She did not report receiving any money for this week. She received her maximum weekly benefit amount of \$389.00 during this week.

REASONING AND CONCLUSIONS OF LAW:

Unused vacation pay must be deducted from unemployment insurance benefits. 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 section 96.5-7. 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 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 section 96.5-7, 871 IAC 24.16.

Severance pay must also be deducted from a claimant's maximum weekly benefit amount. Iowa Code section 96.5-5. Vacation pay is deducted before severance pay, unless otherwise designated by the employer. 871 IAC 24.13(1). Since the employer designated the claimant's severance pay was attributed to April 7 to 17, 2009, this is the time period the claimant's severance payment must be attributed to. Therefore, the claimant is not eligible to receive benefits for the weeks ending April 11 and 18, 2009, because her severance payment exceeded her weekly benefit amount of \$389.00.

In this case the claimant's vacation pay is not applied until the week of April 20 because the employer designated this as the time the vacation pay was attributed to. This means the claimant is not eligible to receive benefits this week because her vacation pay exceeds her maximum weekly benefit amount.

DECISION:

The representative's October 6, 2009 decision (reference 02) is modified in the employer's favor. In accordance with the employer's designation, the claimant's severance pay is attributed to April 7 through 17. The claimant's one week of vacation pay is attributed to April 20 to 24, 2009. This means the claimant is not eligible to receive benefits for the weeks ending April 11, 18 and 25, 2009. As of April 26, 2009, the claimant is eligible to receive her maximum weekly benefits. The issue of overpayment for the week ending April 25 is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs