

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L HEMING
Claimant

APPEAL NO: 11A-EUCU-00348-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 07/26/09
Claimant: Appellant (2)

Iowa Code § 96.5(7) – Vacation Pay
871 IAC 24.26(4) – No Time Period Designated

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 30, 2011 determination (reference 07) that held she was not eligible to receive benefits for the weeks ending August 1 through September 26, 2009, because she received vacation pay that had to be attributed to these weeks. The claimant participated in the hearing. Glenna O'Connor appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the vacation pay the claimant received is all attributed to the week ending July 25, 2009.

ISSUE:

Did the claimant receive vacation pay that should be attributed to the weeks ending August 1 through September 26, 2009?

FINDINGS OF FACT:

The claimant's last day of work for the employer was July 17, 2009. She established a claim for benefits during the week of July 26, 2009. The employer received a notice of claim dated July 30, 2009. On August 10, 2009, the employer faxed the completed notice of claim indicating the claimant received 407.27 hours of vacation pay or \$5,506.29 and the severance pay she received was attributed to July 20 through December 18, 2009.

The parties participated in a hearing in November 2009 before another administrative law judge. The issue at this hearing concerned what weeks the severance payment should be attributed. In the finding of fact for this decision, 09A-UI-16931-ET, the administrative law judge issued a finding of fact, "the employer designated one week of vacation pay in the amount of \$5,506.29 to the week ending July 20, 2009." The decision for 09A-UI-16931-ET was not appealed.

REASONING AND CONCLUSIONS OF LAW:

A finding of fact or law, judgment, conclusion, or final order made in unemployment insurance hearings is binding only on the parties to these proceedings. Iowa Code § 96.6(4). Even

though the decision for appeal 09A-UI-16931-ET stated in the finding of fact that the vacation payment of \$5,506.29 was attributed to one week, the week of July 20, 2009, this is not binding on the parties in this decision because the issue addressed in the previous decision was severance pay, not vacation.

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), 871 IAC 24.16(4).

The facts establish the employer timely reported the total amount of vacation pay the claimant received but **DID NOT** designate the dates to which vacation pay should be applied as they did the severance pay. In accordance with 871 IAC 24.16(4), the vacation pay the claimant received is all attributed to the week ending July 25, 2009.

DECISION:

The representative's March 30, 2011 determination (reference 07) is reversed. The vacation pay the claimant received must all be attributed to the week ending July 25, 2009. As of July 26, 2009, the claimant is eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs