

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KHAMBONG K KHOUNLO  
606 SE TROWBRIDGE  
DES MOINES IA 50315**

**COLORFX MARKETING SERVICE  
10750 AURORA AVE  
DES MOINES IA 50322**

**Appeal Number: 04A-UI-02092-B4T  
OC: 01/25/04 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-7 – Whether the vacation pay was deducted for the correct period

STATEMENT OF THE CASE:

Khambong K. Khounlo appealed from an unemployment insurance decision dated February 23, 2004, reference 01, that held, in effect, the claimant was not eligible to receive benefits for the one week ending February 7, 2004. The records indicate the claimant was receiving or entitled to receive vacation pay, which is considered to be wages and is therefore not eligible to receive unemployment insurance benefits where the vacation pay equaled or exceeded the weekly benefit amount.

A consolidated telephone conference hearing was scheduled and held on March 29, 2004. Khambong K. Khounlo participated. Dave Phillips, Human Resource Director participated on behalf of Colorfx Marketing Services.

Official notice was taken of the unemployment insurance decision bearing reference 01, together with the pages attached thereto (6 pages in all). Official notice was also taken of the unemployment insurance decision bearing reference 02 together with the pages attached thereto (6 pages in all). Claimant's Exhibit A consisting of four pages was admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Khambong K. Khounlo was employed with Colorfx Marketing Services on November 7, 2002. The claimant was subsequently laid off for business reasons on January 27, 2004.

The claimant filed an initial claim for benefits having an effective date of January 25, 2004. The claimant's weekly benefit amount was determined to be \$241.00 and his average weekly wage determined to be \$408.27.

A notice of claim was mailed to the employer on January 29, 2004 and a timely protest filed. The protest indicated only that the claimant was paid vacation pay in the amount of \$825.47 to be applied to the period from January 28, 2004 to February 11, 2004.

The vacation pay received by the claimant was not reported in a proper manner through the Workforce Development Department. Proper application of the vacation pay would prevent the claimant from receiving benefits for the two benefit weeks between January 25, 2004 and February 14, 2004. The claimant received benefits in the amount of \$171.00 for the benefit week ending January 31, 2004, but did not receive benefits for the benefit week ending February 7, 2004. The claimant did receive benefits for the benefit week ending February 14, 2004 in the amount of \$241.00.

The Workforce Development Department has offset benefits in the amount of \$241.00 during the benefit week ending February 21, 2004 and \$155.00 during the benefit week ending February 28, 2004.

#### 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.

Section 871 IAC 24.16 entitled Vacation pay.

If the employer properly notifies the Department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of vacation pay is exhausted.

Proper application of the vacation pay precludes the claimant from receiving unemployment insurance benefits for the two benefit weeks between January 25, 2004 and February 14, 2004. In addition, the remainder of the vacation pay was properly applied to the benefit week ending February 7, 2004.

Following the two decisions under consideration in this consolidated hearing, the Workforce Development Department has recouped the \$396.00 overpayment amount by offsetting amounts of benefits for the two benefit weeks ending February 28, 2004.

DECISION:

The unemployment insurance decision dated February 23, 2004, reference 01, is affirmed. Khambong K. Khounlo is not eligible to receive unemployment insurance benefits for the one week ending February 7, 2004.

kjf/b