

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACY L BURTON**  
Claimant

**APPEAL NO. 16A-UI-00106-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**OC: 11/15/15**  
**Claimant: Appellant (4)**

Iowa Code Section 96.5(7) – Vacation Pay

**STATEMENT OF THE CASE:**

Tracy Burton filed a timely appeal from the December 30, 2015, reference 02, decision that denied benefits for the week that ended November 21, 2015, based on an Agency conclusion that Mr. Burton had received vacation pay, or was eligible to receive vacation pay that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on January 27, 2016. Mr. Burton 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 16A-UI-00107-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. Exhibits A and B and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

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

Whether Workforce Development correctly deducted vacation pay from the claimant's unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracy Burton established a claim for benefits that was effective November 11, 2015. Mr. Burton reported wages and/or vacation pay and received benefits, through December 26, 2015, as follows:

<u>Benefit week end date</u>	<u>Reported Wages/Vacation</u>	<u>Benefits Paid</u>
11/21/15	975.00	0.00
11/28/15	0.00	447.00
12/05/15	0.00	447.00
12/12/15	0.00	447.00
12/19/15	0.00	447.00
12/26/15	0.00	50.00 (offset)
12/26/15	0.00	397.00

Mr. Burton filed his claim in response to being discharged by Von Maur, Inc. Mr. Burton last performed work for Von Maur on Monday, November 16, 2015. Mr. Burton was at work no more than an hour that day. The employer paid Mr. Burton one hour's wages for that day, \$18.50.

At the time Mr. Burton separated from Von Maur, he had accrued 50.25 hours of vacation pay that he had not yet used. The gross dollar value of the vacation pay was \$929.63. In connection with the employment separation, the employer paid Mr. Burton the value of the vacation pay.

Von Maur has elected, through its representative of record, Equifax/Talx, to receive electronic notice of claims affecting the employer's account. On November 17, 2015, Iowa Workforce Development transmitted a notice of claim to the employer, care of Equifax. The notice of claim indicated that the employer's response was due on November 30, 2015. The employer or its representative filed a response by the due date. In the electronic protest, the employer designated November 17, 2015 through November 22, 2015 as the period of the claim to which the employer wanted the vacation pay applied when determining Mr. Burton unemployment insurance benefit eligibility. In a narrative portion of the employer referenced vacation pay in the amount of \$679.88. That amount is likely the net amount the employer paid to Mr. Burton for the 50.25 hours of vacation pay after appropriate tax withholding. In another area of the protest, the employer referenced the 50.25 figure. That figure represented the number of unused hours of vacation at the time of the separation. A Workforce Development claims deputy tried to make sense of the timely information the employer had provided regarding vacation pay and erroneously concluded that the 50.25 figure represented \$50.25 in vacation pay over above the \$679.88 vacation pay figure referenced in the narrative portion of the protest.

#### **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 § 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 § 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 § 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 employer provided a timely response to the notice of claim and designated the period of the claim to which the employer wanted the vacation pay applied when determining Mr. Burton unemployment insurance benefit eligibility. That period was Tuesday, November 17, 2015 through Sunday, November 22, 2015. There were four Monday-Friday work days in the period designated by the employer. Those days were Tuesday, November 17, 2015 through Friday, November 20, 2015. Because all four of those days fell within the benefit week that ended November 21, 2015, the entire vacation amount, \$929.63 was deductible from that week and that week only. Mr. Burton was not eligible for benefits for the week that ended November 21, 2015 because he received vacation pay for that week that exceeded his weekly benefit amount.

Pursuant to Iowa Code section 96.5(7)(c), no deduction for vacation pay shall be taken for any other week of the claim. Though the claims deputy's December 30, 2015, reference 02, did not specifically reference any benefits being deducted from the benefit week that ended November 28, 2015, the claims deputy erroneously apportioned some of the vacation pay to the week that ended November 28, 2015. The erroneous apportionment of vacation pay to the week that ended November 28, 2015 prompted the overpayment decision from which Mr. Burton appeals in the companion case.

**DECISION:**

The December 30, 2015, reference 02, decision is modified as follows. The claimant was not eligible for benefits for the week that ended November 21, 2015 because he received vacation pay for that week that exceeded his weekly benefit amount. No deduction for vacation pay shall be taken for the week ending November 28, 2015 or any other week of the claim.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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