

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARILYN M NUSSBAUM

Claimant

APPEAL NO. 09A-UI-15270-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINCIPAL LIFE INSURANCE COMPANY

Employer

OC: 03/22/09

Claimant: Appellant (2)

Iowa Code § 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Karilyn Nussbaum (claimant) appealed a representative's October 6, 2009 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits for the five week period ending April 25, 2009, due to the receipt of vacation pay from Principal Life Insurance Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 12, 2009. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether claimant received vacation pay at separation, if that amount is deductible from benefits, and if so, for what period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on March 24, 2009, and received paid time off (PTO) in the amount of \$2,387.42 based upon a rate of pay at \$14.27 per hour. The employer's PTO is a combination of sick time and vacation time. The claimant filed for unemployment insurance benefits with an effective date of March 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay was not deducted for the correct period.

Iowa Code § 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.

871 IAC 24.13(4)b provides:

(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

The employer paid the claimant PTO. PTO monies are not listed by the Iowa Code as disqualifying a claimant from receiving unemployment insurance benefits. The employer did not participate in the hearing and, therefore, provided no evidence of any issuance of vacation pay to the claimant. Benefits are allowed.

DECISION:

The October 6, 2009, reference 02, decision is reversed. Vacation pay was not paid to the claimant. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css