

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA A TAPKE

Claimant

APPEAL NO. 11A-UI-12081-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC

Employer

OC: 06/26/11

Claimant: Appellant (1)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Lora Tapke filed a timely appeal from the September 7, 2011, reference 02, decision that denied benefits for the benefit week that ended July 9, 2011 based on an Agency conclusion that she had received or was entitled to receive vacation pay for that week that exceeded her weekly benefit amount. After due notice was issued, a hearing was held on October 6, 2011. Ms. Tapke participated. Lisa Paterno, Human Resources Director, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-12082-JTT. Exhibits A through E and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

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

Whether the employer made a timely designation of the period to which any vacation pay was to be applied.

Whether Iowa Workforce Development appropriately determined the period to which any vacation pay should be applied.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lora Tapke is employed by Exceptional Persons, Inc., as a full-time childcare consultant. The employer temporarily laid Ms. Tapke off effective Friday, July 1, 2011 due to state budget issues. The last day Ms. Tapke actually performed work for the employer prior to the layoff was Thursday, June 30, 2011. Ms. Tapke's wages for the work she performed that week, Monday through Thursday, totaled \$454.08, \$113.52 per day. The employer provided Ms. Tapke with \$113.52 in holiday pay for Monday, July 4, 2011. The employer recalled Ms. Tapke to the full-time employment on Friday, July 8, 2011.

In connection with the temporary layoff, Ms. Tapke established a claim for unemployment insurance benefits that was effective June 26, 2011. Workforce Development calculated Ms. Tapke's weekly benefit amount at \$356.00. For the benefit week that ended July 2, 2011, Ms. Tapke reported \$480.00 in regular wages and received no unemployment insurance benefits. For the benefit week that ended July 9, 2011, Ms. Tapke reported \$115.00 in wages and received \$330.00 in unemployment insurance benefits. Ms. Tapke discontinued her claim for benefits after the benefit week that ended July 9, 2011.

On July 5, 2011, Workforce Development mailed notice to the employer that Ms. Tapke had filed a claim for unemployment insurance benefits. The notice of claim provided a July 15, 2011 deadline for the employer's protest and/or response to the notice of claim. Workforce Development received the employer's faxed response on July 15, 2011. On the notice of claim form, the employer indicated that \$454.08 in vacation pay benefits had been paid to Ms. Tapke and that the employer wanted these benefits apportioned to July 1-7, 2011. The employer also indicated on the notice of claim form that \$113.52 in holiday pay had been paid to Ms. Tapke for the July 4, 2011.

On July 22, the employer notified Ms. Tapke and others that they were required to utilize vacation pay to cover the wages lost during the temporary layoff. At the time of the layoff, Ms. Tapke's supervisors did not know whether vacation pay would be available to cover the layoff period and communicated this to the staff, including Ms. Tapke. The employer has a written layoff policy. The policy indicates that vacation pay will be paid out at the time of a layoff, but that the employee has the option of retaining up to one week of vacation in their balance if the layoff is temporary and expected to last less than one month. It was this policy that employer cited as the basis for requiring Ms. Tapke and others to utilize vacation pay for the period of the short-term layoff. The policy indicates on its face that it went into effect in 1997 and was most recently revised in 2009.

A Workforce Development representative used the information provided by the employer and apportioned the vacation pay as follows. The representative concluded that there were five, Monday-Friday, workdays in the July 1-7, 2011 period designated by the employer as the period to which the vacation pay should be applied. The representative took the total vacation amount, \$454.08 and divided it by five. This yielded a \$90.82 per diem vacation pay amount. The representative apportioned one day's worth of vacation pay, \$90.82, to Friday, July 1. The representative apportioned the remainder of the apportioned vacation pay, \$363.28 to Monday-Thursday, July 4-7, 2011. Because this amount exceeded Ms. Tapke's \$356.00 weekly benefit amount, the representative concluded that Ms. Tapke was not eligible for benefits for the benefit week ending July 9, 2011.

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.

The evidence in the record establishes that under the employer's written policy, Ms. Tapke became entitled to vacation pay in connection with the layoff and was required to use vacation pay in connection with the temporary layoff. The employer provided a timely response to the notice of claim and designated the period to which the employer wanted the vacation pay apportioned. Though the Workforce Development representative did not clearly understand the employer's intentions, this really made no difference with regard to whether Ms. Tapke would be eligible for the benefits during the two-week period that her claim was active. Ms. Tapke's

\$454.08 in wages for the week ending July 2, 2011 rendered her ineligible for benefits for that week. Whether one uses the \$363.28 vacation pay amount the Workforce Development representative applied to the week ending July 9, 2011, or a higher amount more in keeping with the employer's intentions, the vacation pay to be apportioned to the week ending July 9, 2011 exceeded Ms. Tapke's \$356.00 weekly benefit amount and rendered her ineligible for unemployment insurance benefits.

The fact that Ms. Tapke's supervisors were unclear at the time of the layoff regarding whether vacation funds would be available does not decide the issue of whether Ms. Tapke received vacation pay that was deductible from her unemployment insurance benefits. The employer paid the vacation amount to Ms. Tapke. The employer followed the law in designating the period to which the vacation pay should be apportioned. The Workforce Development representative correctly concluded that Ms. Tapke was not eligible for unemployment insurance benefits for the week ending July 2, 2011 and July 9, 2011.

DECISION:

The Agency representative's September 7, 2011, reference 02, decision is affirmed. The claimant was not eligible for benefits for the week ending July 9, 2011 because she received vacation pay deductible from that week's benefits and that vacation exceeded the weekly unemployment insurance benefit amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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