

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A ZICKAU-QUICK
Claimant

APPEAL NO. 14A-UI-07946-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 06/08/14
Claimant: Appellant (5)

Iowa Code Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Kimberly Zickau-Quick filed a timely appeal from the July 31, 2014, reference 02, decision that denied benefits “for the first week of the vacation which ended June 18, 2014.” After due notice was issued, a hearing was held on August 25, 2014. Ms. Zickau-Quick 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 No. 14A-UI-07947-JTT. Exhibits A and B and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency’s administrative record of wages reported by the claimant and benefits paid to the claimant.

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: Kimberley Zickau-Quick was employed by Von Maur, Inc. as a full-time System Administrator. Ms. Zickau-Quick had an annual salary of \$53,000.00, which translated to \$25.50 per hour for a 40-hour workweek. The employer paid Ms. Zickau-Quick monthly. The usual gross monthly pay was \$4,416.00. Ms. Zickau-Quick last performed work for the employer on Wednesday, June 11, 2014. At the time Ms. Zickau-Quick separated from the employment, she had accrued vacation pay benefits that she had not yet used. Ms. Zickau-Quick estimated the vacation amount to be \$2,980.00 for 14 days of accrued vacation.

Ms. Zickau-Quick established a claim for benefits that was effective June 8, 2014. Workforce Development calculated the claimant's weekly benefit amount to be \$408.00. For the week that ended June 14, 2014 the claimant reported \$610.00 in regular wages and received zero benefits. For the week ending July 21, 2014 the claimant reported zero wages and received \$408.00 benefits. For the week ending June 28, 2014 the claimant reported the entire estimated vacation pay amount (\$2,980.00) and received zero benefits. For the weeks ending July 5, 12, 19, and 26, 2014 the claimant reported zero wages and receive \$408.00 in benefits. The week ending August 2, 2014 the claimant reported zero wages and was approved for \$408.00 in benefits. However, Workforce Development withheld those benefits to recover what the Agency believed was an earlier \$408.00 overpayment of benefits for the week ending July 21, 2014.

On June 30, 2014 the employer paid the claimant \$4,701.61 in combined gross wages and vacation pay. The employer did not divide out the accrued vacation pay from the regular wages on the paystub provided to the claimant.

The employer has elected to receive electronic notices of claims for unemployment insurance benefits. On June 11, 2014, Iowa Workforce Development transmitted a notice of claim to the employer concerning Ms. Zickau-Quick's claim for benefits. On Tuesday, June 24, 2014 Workforce Development received the employer's response to the notice of claim. In other words, the employer's response was filed beyond the 10-day statutory deadline. In the employer's response, the employer indicated that it had paid \$3,082.17 in vacation pay to the claimant on June 30, 2014. In the response, the employer indicated that it wanted the vacation pay apportioned to the period of June 12, 2014 through July 2, 2014.

A Workforce Development Claims Deputy used the information provided by the employer and, without documenting the steps they took or why they took them, issued the July 31, 2014, reference 02, decision that denied benefits "for the first week of the vacation which ended June 18, 2014." The Claims Deputy also issued a July 31, 2014, reference 03, decision that Ms. Zickau-Quick was overpaid \$408.00 benefits for the week ending July 21, 2014.

REASONING AND CONCLUSIONS OF LAW:

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.

The weight of the evidence indicates that the claimant did indeed receive \$3,082.17 in vacation pay in connection with her separation from the employment. The evidence also indicates that the employer made an untimely designation of the period to which the employer wanted the vacation pay applied. Under such circumstances, the law required that Workforce Development apportion the vacation pay amount to no more than a week of the claim, in other words to no more than the first five working days following the last day of the employment. Using that approach, it would be appropriate to divide the total vacation pay amount by five to get the daily amount of vacation pay that should have been apportioned to the claim beginning Thursday, June 12, 2014. The appropriate daily amount is \$616.43. The appropriate amount of vacation pay to be apportioned to the week that ended June 14, 2014 is \$1,233.00. Because that amount exceeds the claimant's weekly benefit amount by more than \$15.00, the claimant is not eligible for benefits for the week that ended June 14, 2014. The claimant did not receive benefits for that week. The regular wages paid to the claimant for the week ending June 14, 2014 were already sufficient to render the claimant ineligible for benefits for that week.

The appropriate vacation pay amount to be apportioned to the benefit the week that ended June 21, 2014 is \$1,849.00. Because that amount exceeds the claimant's weekly benefit amount by more than \$15.00, the claimant is not eligible for benefits for the week ending June 21, 2014. Because the claimant received \$408.00 in unemployment insurance benefits for that week, the apportionment of the vacation pay would explain the overpayment decision that followed.

Because the employer provided an untimely response to the notice of claim, the apportioned vacation pay would have no impact on the claimant's eligibility for benefits beyond the benefit week that ended June 21, 2014. Workforce Development did not apportion any amount of vacation pay beyond the week that ended June 21, 2014.

DECISION:

The Claims Deputy's July 31, 2014, reference 02, decision is modified as follows. The claimant received vacation pay that was deductible from her unemployment insurance benefits for the weeks ending June 14, 2014 and June 21, 2014. The vacation pay apportioned to each of those weeks exceeded the claimant's weekly benefit amount by more than \$15.00. The claimant was not eligible for unemployment insurance benefits for the weeks ending June 14, 2014 and June 21, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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