

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABEL SANCHEZ
Claimant

APPEAL NO. 08A-UI-02748-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA HEALTH SYSTEM
Employer

**OC: 02/10/08 R: 03
Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay Deduction for Correct Period

STATEMENT OF THE CASE:

Abel Sanchez filed an appeal from a representative's decision dated March 14, 2008, reference 02, which denied unemployment insurance benefits for the week ending February 23, 2008 finding that the claimant received or was entitled to receive vacation pay which equaled or exceeded his weekly benefit amount. After due notice was issued, a telephone conference hearing was scheduled for and held on April 3, 2008. Mr. Sanchez participated personally. Exhibits One through Four were received into evidence.

ISSUE:

At issue in this matter is whether the claimant received or was entitled to receive vacation pay which exceeded his weekly benefit amount for the week ending February 23, 2008.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer until January 8, 2008 when he was separated from employment. Mr. Sanchez was issued vacation pay in the amount of \$4,902.29 and was applied by the Agency to the week ending February 23, 2008 after being properly reported by the employer.

It is the claimant's position that as the pay was designated as PTO (personal time off) to be utilized for vacation as well as sick time he should not be held ineligible to receive unemployment insurance benefits for the receipt of this compensation.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that Iowa Workforce Development correctly deducted the compensation received by Mr. Sanchez following his discharge from employment to the proper period. It has. The evidence in the record establishes that the claimant received compensation in the amount of \$4,902.29 from this employer following a separation from employment for time accrued to be utilized as

“personal time off.” The amount was properly reported by the employer and thus correctly attributed to the week ending February 23, 2008. As the amount of remuneration received by Mr. Sanchez for that week equaled or exceeded his benefit amount he was ineligible to receive unemployment insurance benefits and benefits paid to him were an overpayment.

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.

For the reasons stated herein the administrative law judge concludes that the claimant received disqualifying vacation pay for the week ending February 23, 2008 and is not eligible to receive unemployment insurance benefits that week.

DECISION:

The representative's decision dated March 14, 2008, reference 02, is hereby affirmed. The claimant received vacation pay for the week ending February 23, 2008 which equaled or exceeded his weekly benefit amount and thus is not eligible to receive unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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