

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANIVANH CHAN
Claimant

APPEAL NO. 08A-UI- 02851-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 02/17/08 R: 02
Claimant: Appellant (2)**

Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 17, 2008, reference 02, that concluded she was ineligible for benefits due to the receipt of vacation pay. A telephone hearing was held on April 8, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant receive deductible vacation pay and was it deducted correctly?

FINDINGS OF FACT:

The claimant worked for the employer from August 7, 2000, through February 12, 2008. The claimant's salary was \$890.50 per week. The claimant was off work on leave under the Family and Medical Leave Act (FMLA) from January 28 to February 11, 2008. On February 22, 2008, the claimant was paid vacation pay for the time she took off for FMLA, totaling \$1,781.00.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 17, 2008. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer stated it had paid the claimant \$1,781.00 in vacation pay on February 22, 2008, but did not designate the period to which the vacation pay was to apply.

REASONING AND CONCLUSIONS OF LAW:

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. Iowa Code § 96.5-7.

In this case, the claimant received vacation pay and the employer did not designate the period to which the pay was attributable. The evidence establishes she did not receive any vacation

pay attributable to the period of time after her last day of work. In fact, the payment of vacation pay compensated the claimant for FMLA leave that she had taken prior to her last day of work. No deduction from the claimant's unemployment insurance benefits for vacation pay is proper in this case.

DECISION:

The unemployment insurance decision dated March 17, 2008, reference 02, is reversed. The claimant is eligible to receive unemployment insurance benefits for the week ending February 23, 2008.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw