

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY L PALMER
Claimant

APPEAL NO. 10A-UI-07289-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF COUNCIL BLUFFS
Employer

**Original Claim: 05/03/09
Claimant: Respondent (4)**

Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

City of Council Bluffs filed an appeal from a representative's decision dated May 4, 2010, reference 01, which held that Barry Palmer's vacation pay would only be attributed to the one week ending May 12, 2009. After due notice was issued, a hearing was held by telephone on July 14, 2010. Mr. Palmer participated personally. The employer participated by Carolyn Grieder, Executive Director, and was represented by William Hughes, Attorney at Law.

ISSUE:

At issue in this matter is whether Mr. Palmer's vacation pay and severance pay were deducted for the correct period.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Palmer's last day of work for the City of Council Bluffs was May 5, 2009. In conjunction with his separation, he was paid vacation pay in the gross amount of \$2,520.00, which represented 15 days of vacation. He also received severance pay in the gross amount of \$504.00, which represented 3 days of pay.

Mr. Palmer filed a claim for job insurance benefits effective May 3, 2009, and notice of the claim was mailed to the employer. The employer reported the vacation and severance payments, but did not designate a time period to which either payment was to apply. The notice of claim form contains a warning that the failure to designate the dates to which a vacation payment applies will result in the entire payment being applied to the five working days following the last day worked. Mr. Palmer reported vacation pay and wages for the week ending May 9, 2009. Because the amount reported exceeded his weekly job insurance benefit amount, he was not paid benefits for the week. He reported vacation pay of \$240.00 for the week ending May 16 and received \$135.00 in benefits.

REASONING AND CONCLUSIONS OF LAW:

Vacation pay is deducted from job insurance benefits on a dollar-for-dollar basis. 871 IAC 24.16(96). Severance pay is deducted on the same basis. 871 IAC 24.13(3). Vacation pay is deducted first when paid in conjunction with other deductible payments. 871 IAC 24.13(1). Because the employer did not make a timely designation of the period to which the vacation payment was to be applied, the entire amount would be deducted for the one-week period following the last day worked. 871 IAC 24.16(3).

An employer may extend the period to which a vacation payment applies only if there was an original designation filed in a timely manner. Since the employer herein did not designate a vacation period during the ten-day protest period, it may not later extend the vacation period. In Mr. Palmer's case, that means that the entire vacation payment was attributable to only the one week ending May 12, 2009. His three days of severance pay would then be deducted, rendering him ineligible to receive benefits for the week ending May 16, 2009. He has already repaid benefits received for the week ending May 16, 2009.

DECISION:

The representative's decision dated May 4, 2010, reference 01, is hereby modified. Mr. Palmer had vacation pay and severance pay that was deductible only for the period from May 6 through May 15, 2009.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw