

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT E STEPHENS III
Claimant

APPEAL NO. 10A-UI-06496-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF COUNCIL BLUFFS
Employer

OC: 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 April 20, 2010, reference 02, which held that Robert Stephens' vacation pay would only be attributed to the one week ending May 5, 2009. After due notice was issued, a hearing was held by telephone on June 17, 2010. Mr. Stephens participated personally. The employer participated by Carolyn Grieder, Executive Director, and was represented by Robert Livingston, Attorney at Law.

ISSUE:

At issue in this matter is whether Mr. Stephens' 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. Stephens' last day of work for the City of Council Bluffs was April 28, 2009. He received regular wages through May 1. In conjunction with his separation, he was paid vacation pay in the gross amount of \$5,972.40, which represented 22.5 days of vacation. He also received severance pay in the gross amount of \$1,592.64, which represented 6 days of pay.

Mr. Stephens filed a claim for job insurance benefits effective May 3, 2009 and notice of the claim was mailed to the employer on May 11, 2009. 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. The employer filed its report with Workforce Development on May 18, 2009. Mr. Stephens was not paid job insurance benefits for the week ending May 9, 2009. He next claimed benefits for the week ending June 13, 2009. He reported \$133.00 in vacation pay for the week ending June 13 and received \$228.00 in job insurance benefits for the week.

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.

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. Stephens' case, that means that the entire vacation payment was attributable to only the one week ending May 9, 2009. His severance payment would then be deducted. There were six days of severance pay, which would be attributed to the six workdays from May 11 through May 18.

Mr. Stephens had exhausted both his vacation pay and his severance pay by no later than the week ending May 23, 2009. He did not receive job insurance benefits until the week ending June 13, 2009. Therefore, he did not receive benefits for the bulk of the time for which the employer believes he should be ineligible.

DECISION:

The representative's decision dated April 20, 2010, reference 02, is hereby modified. Mr. Stephens had vacation pay and severance pay for the period from May 4 through May 18, 2009. No overpayment results as he did not receive benefits during this time.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css