

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARJORIE PHELPS  
1023 N THORNWOOD  
DAVENPORT IA 52804

UTICOR TECH  
c/o JANE MELITO  
PO BOX 1327  
BETTENDORF IA 52722 1327

Appeal Number: 05A-UI-11154-DWT  
OC: 10/02/05 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Marjorie Phelps (claimant) appealed a representative's November 1, 2005 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits for the weeks ending October 8 to November 12, 2005, because she had received vacation pay from Uticor Tech (employer) for these weeks. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 15, 2005. The claimant participated in the hearing. Linda Wooten, the human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

What weeks should the vacation pay the claimant received be attributed to?

#### FINDINGS OF FACT:

The last day the claimant worked for the employer was October 5, 2005. The claimant had worked full time and earned \$10.35 an hour. The claimant established a claim for unemployment insurance benefits during the week of October 2, 2005. The claimant's maximum weekly benefit amount is \$324.00.

The employer timely notified the Department that the claimant received a gross vacation payment of \$2,163.15 and attributed the vacation payment from October 6 through November 11, 2005. When the claimant established her claim on October 6, the claimant reported she would receive vacation pay totaling \$910.00. This amount was based on the vacation the claimant had earned in 2004 but had not used by October 5, 2005. The claimant did not realize the employer would pay her for the 120 hours she earned in 2005. When the claimant established her claim, a representative told her to report the \$910.00 vacation payment during the week ending October 8. The claimant reported this amount when she filed her claim for this week.

#### REASONING AND CONCLUSIONS OF LAW:

When an employer pays or is obligated to make a vacation payment, the payment is deemed as wages for unemployment insurance purposes. Iowa Code §96.5-7. If an employer timely notifies the Department the amount of vacation pay and indicates the payment should be applied to a specific period, the Department must apply the vacation payment to the designated time. If the employer does not timely notify the Department, the time period in which vacation pay should be attributed shall be attributed to the one week following the last day or if the claimant does not file a claim immediately, vacation pay shall not be deducted from any week. 871 IAC 24.16(1) and (3).

If the claimant had only received 88 hours of vacation, as she believed she would receive and properly reported, the information the Department representative gave to her on October 6 was correct. The employer's policy, however, dictates that employees who are terminated or laid off receive all the vacation pay accrued through the last day of work. As a result of this policy, the claimant received an additional \$1,253.15. If the claimant had known she would receive this additional amount on October 6 and had initially reported it, she would not be eligible to receive benefits until November 13, 2005. This is the same time period the employer indicated the vacation payment should be attributed. Based on 871 IAC 24.16(1) and Iowa Code §96.5-7, the claimant is not eligible to receive unemployment insurance benefits until November 13, 2005, because the vacation pay attributed to these weeks exceeds her maximum weekly benefit amount of \$324.00.

#### DECISION:

The representative's November 1, 2005 decision (reference 01) is affirmed. Based on the total amount of vacation pay the claimant received, she is not eligible to receive benefits for the weeks ending October 8 through November 12, 2005.

dlw/tjc