

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J MARLOW
Claimant

APPEAL NO: 09A-UI-07240-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY NATIONAL BANK
Employer

OC: 1/04 /09
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Michael J. Marlow (claimant) appealed a representative's May 4, 2009 decision (reference 01) that concluded he was not eligible to receive benefits until January 14, 2009, because he received a week of vacation pay from Community National Bank (employer) that should be attributed to the first week he was unemployed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2009. The claimant participated in the hearing. Prior to the hearing, the employer sent a letter informing the Appeals Section the employer would not be participating in the June 4 hearing. The employer's letter was read into the record. 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 days should the claimant's vacation be attributed?

FINDINGS OF FACT:

The claimant's last day of work for the employer was January 6, 2009. The claimant established a claim for benefits during the week of January 4, 2009. The employer paid the claimant one week of vacation pay, \$964.08, and a lump sum severance payment of \$5,326.97 in a check issued on January 15, 2009.

The computer records indicate the claimant did not file a weekly claim until the week ending January 31, 2009.

REASONING AND CONCLUSIONS OF LAW:

Vacation pay is deemed wages for unemployment insurance purposes must be deducted if attributed to a week in which a claimant files a claim for benefits. Iowa Code section 96.7-5. If an employer does not designate a specific time to attribute to the vacation pay, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day of work. If the claimant does not claim benefits during the normal

employer workweek immediately following the last day worked, the entire amount of the vacation pay shall not be deducted from any other week of benefits. 871 IAC 24.16(3).

This means the vacation pay the claimant received should be attributed to January 7 through 13, 2009. Since the record does not indicate the claimant filed any claims for the weeks ending January 10 and 17, vacation pay shall not be deducted from any other week. (If the claimant had filed claims for these weeks, he would not have been eligible because the vacation pay attributed to these two weeks exceeded his maximum weekly benefit amount.)

DECISION:

The representative's May 4, 2009 decision (reference 01) is affirmed. The vacation pay the claimant received from the employer must be attributed to one week subsequent to January 6, 2009. This means the vacation pay is attributed to January 7 through 13, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs