

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

TRACY K SHAY
2459 – 285TH AVE
WELDON IA 50264

CELLULAR ADVANTAGE INC
3829 – 100TH ST
URBANDALE IA 50322-2049

Appeal Number: 04A-UI-00997-CT
OC: 12/14/03 R: 03
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Tracy Shay filed an appeal from a representative's decision dated January 27, 2004, reference 01, which held she was not eligible to receive job insurance benefits for the two weeks ending January 10, 2004 because of her receipt of vacation pay. After due notice was issued, a hearing was held by telephone on February 23, 2004. Ms. Shay participated personally. The employer participated by Matt Hayertz, CFO, and Doug Ecklund, CEO.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Shay's last day of work for Cellular Advantage, Inc. was October 31, 2003. She was paid severance pay in the gross amount of \$11,666.68. The employer indicated on the notice of claim form that the severance pay was for the period November 1 through December 31, 2003.

Ms. Shay was also paid the gross amount of \$5,453.76 for 19 days of accumulated but unused vacation time. The employer indicated the vacation pay was for the period June 27, 2002 through December 31, 2003. June 27 represents Ms. Shay's anniversary date, the date on which vacation time would begin accruing. The employer chose December 31, 2003 as the ending date for the vacation pay so that it would coincide with the ending of her severance payment. Ms. Shay filed her claim for job insurance benefits effective December 14, 2003.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is what effect, if any, Ms. Shay's receipt of vacation pay has on her eligibility for job insurance benefits. Ordinarily, the vacation pay is deducted based on the vacation period designated by the employer on the notice of claim form.

871 IAC 24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

The administrative law judge concludes that the employer in this matter did not designate a period to which Ms. Shay's vacation pay was to be attributed. The law presumes that the period designated by the employer will be a period after the end of the employment. The period listed by the employer in this matter was June 27, 2002 through December 31, 2003. This represents the period during which Ms. Shay accrued vacation time. The payment made to her by the employer was for vacation time she had not used as of the end of her employment. Therefore, the payment would be attributed to days following her last day worked. Ms. Shay had severance payments from November 1 through December 31. The administrative law judge presupposes that she would not have received regular pay as well as vacation pay for the same days. For the above reasons, the administrative law judge concludes that the employer's designation of the period to which the vacation pay was to be deducted was, in essence, no designation at all.

Ms. Shay's last day of work was October 31 and she did not file a claim for job insurance benefits until December 12, 2003. Because the employer did not designate a period for the vacation pay and because Ms. Shay did not file a claim during the first workweek immediately following her last day of work, none of her vacation pay is deductible. For this reason, the representative's decision shall be reversed. Any severance payments attributed to the week ending January 3, 2004 will be considered in Appeal 04A-UI-00998-CT.

DECISION:

The representative's decision dated January 27, 2004, reference 01, is hereby reversed. Ms. Shay did not have vacation pay which would be deductible from her job insurance benefits. Benefits are allowed for the two weeks ending January 10, 2004, provided she satisfies all other conditions of eligibility.

cfc/kjf