

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HONORIO LOZANO
Claimant

APPEAL NO. 10A-UI-04741-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

**Original Claim: 03/07/10
Claimant: Appellant (1)**

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 22, 2010, reference 02, which held the claimant ineligible for unemployment insurance benefits for the week ending March 13, 2010. After due notice, a telephone conference hearing was scheduled for and held on May 18, 2010. Employer participated by Scott McKenzie, unemployment claims specialist. Although the claimant provided a telephone number at which he could be reached for the hearing, he did not answer the telephone when that number was dialed by the administrative law judge. A message was left for the claimant to call immediately to participate in the hearing. The claimant did not call during the hearing. The record consists of the testimony of Scott McKenzie and Employer's Exhibit 1. Official notice was taken of agency records.

ISSUE:

Whether the vacation pay was deducted for the correct period.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a temporary staffing agency. The claimant worked directly for the employer and did not take temporary assignments. His employment ended on March 9, 2010. The claimant received vacation pay in the amount of \$580.48. The employer did not file a written designation of the dates to which that vacation pay applied.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation payment or becomes obligated to make a payment, the vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the

dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code section 96.5-7, 871 IAC 24.16. If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of the extension in writing to the department before the period of extension begins. 871 IAC 24.26(2).

Since the employer did not designate the period of time the vacation pay should be attributed and the claimant filed a claim immediately, the vacation pay must be applied to the week ending March 13, 2010. 871 IAC 24.26(3). Therefore, the claimant is eligible to receive benefits as of March 14, 2010, and no further vacation pay deductions shall be made after March 13, 2010.

DECISION:

The decision of the representative dated March 22, 2010, reference 02, is affirmed. Vacation pay was correctly applied to the week ending March 13, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw