

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY A SKINNER
Claimant

APPEAL NO. 10A-UI-04895-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 01/03/10
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 24, 2010, reference 01, which held claimant had been overpaid the sum of \$218.00 in unemployment insurance benefits for the week between January 3, 2010, and January 9, 2010. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2010. Claimant participated. Employer participated by Teresa Feldmann, Assistant Human Resources Manager. After the hearing was completed on May 13, 2010, the administrative law judge discovered that the hearing had not been properly recorded. Both parties were notified that the record would need to be reopened in order to properly record the testimony of both witnesses. The record was reopened and another hearing was held on May 14, 2010. Both the claimant and Ms. Feldmann participated. The record consists of the testimony of Cathy Skinner and the testimony of Teresa Feldmann. Official notice is taken of agency records, in particular a letter dated January 19, 2010, from TALX UC Express to the agency concerning the designation of vacation pay.

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 claimant was temporarily laid off by the employer for the week of January 4, 2010, through January 8, 2010. The claimant filed a claim for unemployment benefits with an original claim date of January 3, 2010. She received benefits during the week ending January 9, 2010.

On January 7, 2010, a notice of claim was sent to the employer in care of TALX UCM Services. TALX is the third party administrator for the employer in unemployment insurance claims in Iowa. In response to that notice of claim, TALX sent a letter to the agency stating that the claimant had received vacation pay in the amount of \$217.68 for the period ending January 9, 2010. This letter was postmarked on January 19, 2010.

The vacation pay received by the claimant reflected unused vacation days from the year 2009. It was paid to the claimant on January 15, 2010. The agency then issued a decision informing the claimant that she had been overpaid unemployment insurance benefits in the amount of \$218.00 for the week ending January 9, 2010, as a result of receipt of this vacation pay.

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).

The fact the employer issued the claimant a paycheck on January 15, 2010 for vacation pay that represented unused vacation time in 2009 does not affect the outcome of this case. Since the employer's duly authorized agent, TALX, properly designated the period of time to which the vacation pay should be attributed, the regulations are clear that this designation must be followed. The principle behind this law prevents a claimant from double dipping or receiving both vacation pay and unemployment insurance benefits from a base period employer for the same weeks. Since the employer designated and intended the vacation pay to cover the week ending January 9, 2010, this is the timeframe to which the vacation pay must be attributed. The administrative law judge recognizes that Ms. Feldmann testified that this was not the employer's intent. However, Ms. Feldmann also acknowledged that TALX is the employer's third party administrator for unemployment insurance benefits, and therefore the employer is bound by the actions of TALX.

DECISION:

The decision of the representative dated March 24, 2010, reference 01, is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$218.00 for the week between January 3, 2010, and January 9, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css