

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

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SIOUX CITY IA 51104

TAYLOR EQUIPMENT RENTAL CO INC  
PO BOX 1107  
SIOUX CITY IA 51102-1107

Appeal Number: 05A-UI-04881-SWT  
OC: 01/09/05 R: 01  
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 96.4-4 - Monetary Eligibility

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 5, 2005, reference 01, that concluded he was not monetarily eligible for unemployment insurance benefits because he did not have at least one and one-quarter times his high quarter wages in his base period and his request to transfer wages from the fourth quarter 2004 to the third quarter 2004 was denied. A telephone hearing was held on May 24, 2005. The claimant participated in the hearing. Thelma Carver participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant did not have any income in the fourth quarter of 2003. He worked for Olympic Capital Construction during the first quarter of 2004 and was paid wages totaling \$4,259.00. He worked for the employer, Taylor Equipment Rental starting the week of August 6, 2004. His

first paycheck totaled \$1,000.00 and was paid on August 13, 2004. His second paycheck totaled \$1,000.00 for work performed during the week of September 25 through October 1, 2004, and was paid on October 5, 2004. He was paid a total of \$3,156.00 during the remainder of October and November 2004. The claimant then worked for Brown Construction from November 15, 2004 until January 4, 2005, when he was laid off due to lack of work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 9, 2005. His base period was determined to be October 1, 2004, through September 30, 2004. The claimant was paid wages totaling \$4,259.00 for the first quarter of 2004, and \$1,000.00 for the third quarter of 2004, which when added together equals \$5,259.00. One and one-quarter times \$4,259.00 equals \$5,323.75.

#### REASONING AND CONCLUSIONS OF LAW:

In order to be eligible to receive unemployment insurance benefits, the law requires sufficient wages to meet the following formula: "The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest." Iowa code § 96.4-4. (Underline added for emphasis). Furthermore, the unemployment insurance rules provide that employers report on the quarterly payroll report submitted to the department "the total wages paid and taxable wages paid to each employee during the calendar quarter." 871 IAC 22.3(6)a. (Underline added for emphasis).

The claimant accurately states that if the wages from his second paycheck were transferred from the fourth quarter 2004 to the third quarter 2004, he would satisfy the one and one-quarter times requirement. He admitted, however, that the second paycheck was paid to him on October 5, 2004.

The law requires employers to report the wages on the quarterly payroll report during the quarter when the wages were paid, and likewise, the law requires that the one and one-quarter times requirement be calculated based on when the wages were paid. An administrative law judge's job is to apply the law as written, not rewrite the law to achieve some desired result. In this case, the law is clear and leaves no room for interpretation. The claimant has not satisfied the one and one-quarter times requirement set forth in the statute. He is ineligible to receive unemployment insurance benefits.

#### DECISION:

The unemployment insurance decision dated May 5, 2005, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits, and the wages paid to the claimant by the employer on October 5, 2005, were properly reported for the fourth quarter of 2005.

saw/pjs