

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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Appeal Number: 04A-UI-09002-SWT  
OC: 07/04/04 R: 03  
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 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 20, 2004, reference 03, that concluded he was ineligible to receive unemployment insurance benefits for the eight weeks ending August 28, 2004, due to the receipt of vacation pay. A telephone hearing was held on September 14, 2004. The claimant participated in the hearing. Dave Bergeon participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from December 16, 1974, through July 2, 2004. The claimant's rate of pay was \$22.55 per hour based on 40 hours of work per week. At the time of his separation from employment, the claimant understood that he would be receiving a lump sum payment of his unused vacation hours.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 4, 2004. His weekly benefit amount was determined to be \$381.00. He reported to an agency representative that he would be receiving vacation pay and was advised to report it during the week ending July 10, 2004. The claimant reported receiving vacation pay on his weekly claim for the week ending July 10, 2004, and did not receive any benefits for that week.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer and reported the claimant would be paid \$7,507.88 in vacation pay, which was a rough estimate of 333 hours of unused vacation pay. In its response, the employer designated the period from July 3 through August 28, 2004, as the period to which the vacation pay was to apply.

On August 1, 2004, the claimant was paid a total of \$7,896.11 for 350.16 hours of unused vacation pay. This varied from what the employer originally reported because the exact amount could not be determined at the time the notice of claim was completed.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received vacation pay deductible from his unemployment insurance benefits.

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has vacation pay attributable to the same week. Iowa Code Section 96.5-7. Employers are permitted to designate the period to which the vacation pay is attributable if the designation is made within ten calendar days after the employer receives notice of the filing of the individual's claim and to extend the vacation period if the extension is requested in writing. 871 IAC 24.16(1). If an employer fails to make a timely designation, the entire amount of vacation pay is to be applied to the one-week period beginning with the next workday after the last day of work. 871 IAC 24.16(3).

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable as July 3 to August 28, 2004. There is nothing unreasonable about this designation, and in fact, the employer could have extended the vacation period since the claimant actually was paid for over eight weeks of vacation pay. The employer, however, has not requested in writing that the vacation period be extended, and the claimant is, therefore, ineligible for unemployment insurance benefits for eight weeks ending August 28, 2004.

#### DECISION:

The unemployment insurance decision dated August 20, 2004, reference 03, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the eight weeks ending August 28, 2004, due to the receipt of vacation pay.

saw/pjs