

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

BRIAN L DEMOSS
3976 – 14TH AVE N
ESTHERVILLE IA 51334

INSTITUTIONAL EQUIPMENT INC
1302 AIRPORT RD
PO BOX 420
EMMETSBURG IA 50536

Appeal Number: 04-UI-08243-DWT
OC: 07/04/04 R: 01
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 are 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:

Brian L. DeMoss (claimant) appealed a representative's July 27, 2004 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits for the week ending July 10, 2004 because he received vacation pay this week from institutional Equipment, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2004. The claimant appeared for the hearing. Lynn Buske appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive vacation pay for the week ending July 10, 2004?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of July 4, 2004. The claimant was on a temporary layoff the week of July 4. The employer initially paid and reported that the claimant received 32 hours of vacation for the week of July 4.

The following week the claimant informed the employer that he did not believe he was entitled to any vacation pay. The employer's record did not reflect that the employer had rehired the claimant. Since the claimant was correct, the employer deducted 32 hours of pay from the paycheck he received for the week of July 12.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a payment or becomes obligated to make a vacation payment, the vacation pay is considered wages for unemployment insurance purposes. Iowa Code §96.5-7. The facts establish the employer made a mistake when the claimant initially received 32 hours of vacation pay during the week he was on layoff, July 4. Since the claimant was not entitled to any vacation payment, the employer deducted 32 hours of pay from the claimant's July 12 paycheck. This means the employer did not pay the claimant 32 hours of vacation pay for the week ending July 10. The claimant is eligible to receive unemployment insurance benefits during the week ending July 10.

DECISION:

The representative's July 27, 2004 decision (reference 02) is reversed. The claimant did not receive 32 hours of vacation pay for the week ending July 10, 2004. Therefore, he is eligible to receive benefits for the week ending July 10, 2004, provided he meets all other eligibility requirements. No vacation pay shall be attributed to this week.

dlw/pjs