

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

GREGORY M BRESSLER
800 – 7TH AVE NW
INDEPENDENCE IA 50644-1512

TYSON RETAIL DELI MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-05169-DWT
OC: 04/16/06 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, 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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-7 – Vacation Payment

STATEMENT OF THE CASE:

Gregory M. Bressler (claimant) appealed a representative's May 12, 2006 decision (reference 02) that concluded he was not eligible to receive benefits for the weeks ending April 22, 2006, because Tyson Retail Deli Meats, Inc. (employer) paid him vacation pay for this week. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 31, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. 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:

Is the claimant eligible to receive benefits for the week ending April 22, 2006?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of April 16, 2006. The claimant's last day of work was April 16, 2006. The employer paid the claimant a vacation payment of more than \$900.00. The employer designated the vacation pay to the week ending April 22, 2006. The claimant's maximum weekly benefit amount is \$324.00.

The claimant filed a claim for benefits for the week ending April 22, 2006. The claimant forgot to report the vacation payment he received this week. The claimant reported the vacation payment when he filed his claim for the week ending April 29, 2006.

REASONING AND CONCLUSIONS OF LAW:

When an employer pays or is obligated to pay out a vacation payment, the payment is deemed as wages for unemployment insurance purposes. If the vacation payment is more than a claimant's weekly benefit amount, a claimant is not eligible to receive benefits the week in which the vacation pay is attributed. Iowa Code § 96.7 and 871 IAC 24.16.

The employer designated the vacation pay to be attributed to the week ending April 22, 2006. The claimant did not dispute that he made a mistake when he did not report the vacation pay for the week ending April 22 and tried to correct his mistake when he reported the vacation pay the following week. For unemployment insurance purposes, the claimant is not legally entitled to receive benefits for the week ending April 22, 2006, because vacation pay designated to this week exceeds his maximum weekly benefit.

DECISION:

The representative's May 12, 2006 decision (reference 02) is affirmed. The claimant is not entitled to receive benefits for the week ending April 22, 2006, because he received vacation pay that exceeded his maximum weekly benefit amount this week.

dlw/kkf