

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

CONSTANCE L HUINKER
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ADVANCED DATA COMM INC
301 DATA ST
DUBUQUE IA 52002

Appeal Number: 05A-UI-00112-SWT
OC: 11/28/2004 R: 04
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 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 Pay
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 21, 2004, reference 01, that concluded she was overpaid \$157.00 in unemployment insurance benefits for the week ending December 4, 2004, due to the receipt of severance pay. A telephone hearing was held on January 20, 2005. The claimant participated in the hearing. Jenny Bauer 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 May 1, 2001, through November 5, 2004. At the time of her separation from employment, the claimant received vacation pay of \$156.82 in

vacation pay. She also received \$914.40 in severance pay, which was to cover the period from November 6 through November 26, 2004.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 28, 2004. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer designated the period from November 6 through November 26, 2004, as the period to which the severance pay was to apply. The employer reported paying the claimant \$156.82 in vacation pay but did not designate the days to which it applied.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received vacation pay deductible from her unemployment insurance benefits. Although the Agency determined that the claimant received severance pay, the evidence is clear that any severance pay the claimant received was prior to the effective date of her claim.

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. Iowa Code section 96.5-7.

In this case, the claimant received vacation pay, but the employer failed to designate the period to which the pay was to be applied. Since the claimant did not apply for benefits until November 28, no vacation pay deduction is required. The severance pay was designated as applying to the period before the claimant applied for unemployment insurance benefits and likewise is not deductible. The claimant was not overpaid unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated December 21, 2004, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits for the week ending December 4, 2004. She was not overpaid any unemployment insurance benefits.

saw/pjs