

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

MARTY J WEST JR  
604 SOUTH ST  
SHELBY IA 51570

DAN NELSON AUTOMOTIVE GROUP INC  
DBA DAN NELSON FINANCE SUPER  
CENTER  
2900 W 12<sup>TH</sup> ST  
SIOUX FALLS SD 57104-3703

Appeal Number: 05A-UI-05107-AT  
OC: 04-24-05 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 96.5-5 – Severance Pay  
Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Marty J. West, Jr., filed a timely appeal from an unemployment insurance decision dated May 16, 2005, reference 02, which denied benefits to him for the week ending May 14, 2005 upon a finding that he was entitled to receive vacation pay for the week in question. After due notice was issued, a telephone hearing was held on June 17, 2005 with Mr. West participating on his own behalf. Payroll Coordinator Michele Mashlan participated for the employer, Dan Nelson Automotive Group, Inc. Employer Exhibits One and Two were admitted into evidence. This matter is considered on a consolidated record with appeals 05A-UI-05108-AT, 05A-UI-05109-AT, 05A-UI-05110-AT, 05A-UI-05112-AT and 05A-UI-05115-AT.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marty J. West, Jr.'s employment with Dan Nelson Automotive Group, Inc. ended on April 22, 2005. He filed a claim effective April 24, 2005. His weekly benefit amount is \$310.00.

In connection with his separation from employment, Mr. West received 45 hours of vacation pay in the gross amount of \$558.90. He also received ten days of severance pay in the gross amount of \$1,380.82.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether commencement of Mr. West's unemployment insurance benefits must be delayed because of his receipt of vacation and severance pay. The administrative law judge concludes that commencement of benefits must be delayed until May 16, 2005.

Iowa Code section 96.5-5 and 96.5-7 deal with the unemployment insurance treatment of severance pay and vacation pay received by an individual in connection with his or her separation from employment. Each of these payments is deemed to be wages deductible from an individual's unemployment insurance benefits for the week or weeks to which they are attributed. The evidence in this record establishes that Mr. West received vacation and severance pay amounting to three weeks and five hours of his regular pay. For this reason, benefits must be withheld for the three weeks ending May 14, 2005. He is eligible for partial benefits in the amount of \$248.00 for the week ending May 21, 2005 and to his full weekly benefit amount thereafter.

The fighting issue in this case is whether the amount designated severance pay by the employer was in fact payment for services rendered. The administrative law judge resolves this dispute in favor of the employer based upon the testimony of Ms. Mashlan and the documentary evidence contained in Employer Exhibit One.

#### DECISION:

The unemployment insurance decision dated May 16, 2005, reference 02, is affirmed. The claimant is ineligible for unemployment insurance benefits for the week ending May 14, 2005. The claimant is eligible for partial benefits in the amount of \$248.00 for the week ending May 21, 2005 and to his full weekly benefit amount thereafter.

pjs/pjs