

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

TINA D BERCH
2403 PERU RD
PERU IA 50222

MAHLE TENNEX NORTH
AMERICA INC
3001 MCKINLEY AVE
DES MOINES IA 50321

Appeal Number: 05A-UI-01060-SWT
OC: 11/21/04 R: 03
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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 24, 2005, reference 01, that concluded that she was ineligible to receive unemployment insurance benefits for the week ending January 1, 2005, due to the receipt of vacation pay. A consolidated telephone hearing was held on February 25, 2005. The claimant participated in the hearing with her co-claimants, Diana Lynam and Mandy Jurgensen. Ceci Hickman participated in the hearing on behalf of the employer. Exhibits One through Three and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer until December 22, 2004. At that point, the claimant was temporarily laid-off due to lack of work. The claimant returned to work on January 3, 2005.

In late September 2004, the employer held a meeting to notify employees that it was revising its vacation policy. Previously, an employee had to wait one year before receiving vacation pay. Under the new policy, employees would accrue vacation pay immediately. The employer notified employees that on December 17, 2004, all employees would be paid for their unused vacation pay for 2004. On December 17, 2004, the claimant received \$1,415.31, which represented approximately 129 hours of unused vacation.

The plant was on temporary shutdown from December 23, 2004, through January 3, 2005. At the point that the payment was made on December 17, 2004, neither the claimant nor the employer knew with certainty that there would be a temporary shutdown at the end of the year.

The payment of vacation pay was made to start everyone out on January 1, 2005, with a "clean slate" in terms of the new vacation policy and was not made in connection with any separation or layoff from work.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of December 26, 2004. The claimant filed a weekly claim for unemployment insurance benefits for the week ending January 1, 2005.

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 reported the total amount of vacation that the claimant received on December 17 and designated the period from December 23 through 31, 2004, as the period to which the vacation pay was to apply.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received vacation pay deductible for unemployment insurance benefits.

Vacation pay must be deducted from unemployment insurance benefits: (1) when such payment is made "in connection with a separation or layoff of an individual," (2) 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 (3) if the claimant claims benefits during a week the employer designates for vacation pay. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code Section 96.5-7.

The vacation pay that the claimant received on December 17, 2004, cannot be considered paid "in connection with a separation or layoff of an individual" since it was paid before the layoff occurred and was paid out without regard to whether or not the claimant was going to be laid off. The plain meaning of the statute dictates that the payment not be deducted from the claimant's benefits. On the other hand, I do not fault the employer for reporting this payment since this involves a situation outside the ordinary situation in which a claimant receives vacation pay.

DECISION:

The unemployment insurance decision dated January 24, 2005, reference 01, is reversed. The claimant is eligible to receive unemployment benefits for the week ending January 1, 2005.

saw/s