

**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**

**STACY L STACKIS
9051 ROYALWOOD
PEOSTA IA 52068**

**FLEXSTEEL INDUSTRIES INC
PO BOX 877
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-11861-SWT
OC: 10/16/05 R: 04
Claimant: Appellant (4-R)**

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 November 14, 2005, reference 02, that concluded she was ineligible to receive unemployment insurance benefits for the one week ending October 22, 2005, due to the receipt of vacation pay. A telephone hearing was held on December 7, 2005. The claimant participated in the hearing. Sheri Droessler participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from October 30, 2003, through October 12, 2005, when she was laid off for lack of work. The claimant's rate of pay was \$13.58 per week. At the time of her separation from employment, the claimant had 48 hours of unused vacation. She received the vacation pay totaling \$652.02 (\$108.67 per week) for her unused vacation hours

during the week of October 16, 2005. Under the employer's work rules, laid-off employees are allowed to designate the days for which they receive vacation pay. The claimant had designated the days as October 17 and 31 and November 1, 2, 3, and 4, 2005.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 16, 2005. Her weekly benefit amount was determined to be \$311.00. 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 October 16 through October 22, 2005, as the period to which the vacation pay was to apply because it was paid during that week.

The claimant reported the vacation pay during the weeks that she had designated (except that she mistakenly had reported one day of vacation pay for the week ending October 29). She reported \$101.00 in vacation pay for the week ending October 22 and was paid \$210.00. She reported \$101.00 in vacation pay for the week ending October 29 and was paid \$210.00. She reported \$507.00 in vacation pay for the week ending November 5 and was not paid any unemployment insurance benefits because her vacation pay exceeded her weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant received vacation pay deductible from her unemployment insurance benefits.

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. 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.

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable as October 16 to October 22, 2005. There is nothing unreasonable about this designation because it has the same result as if the employer had reported two days of vacation for October 13 and 14 and four days of vacation for October 17 through 20. The claimant, therefore, is ineligible for unemployment insurance benefits for the week ending October 22, 2005, and was overpaid \$210.00 for that week.

The claimant should not have had a deduction from her weekly benefit amount for weeks ending October 29 and November 5, 2005. As a result, the claimant was underpaid \$101.00 for the week ending October 29 and \$311.00 for the week ending November 5, for a total underpayment of \$412.00.

DECISION:

The unemployment insurance decision dated November 14, 2005, reference 02, is modified in favor of the claimant. The claimant is ineligible to receive unemployment insurance benefits for the week ending October 22, 2005, due to the receipt of vacation pay. She, however, is eligible

for benefits for the subsequent weeks. This case is remanded to the Agency to implement this decision's conclusion that the claimant was underpaid \$412.00 for the weeks ending October 29 and November 5, 2005.

saw/tjc