

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

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THE UNIVERSITY OF IOWA  
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Appeal Number: 04A-UI-10165-SWT  
OC: 08/01/04 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, 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 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated September 9, 2004, reference 01, that concluded the claimant was ineligible for unemployment insurance benefits for the weeks between August 1 and October 9, 2004, due to the receipt of vacation pay. A telephone hearing was held on October 12, 2004. The claimant participated in the hearing. Dave Burgeon 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 January 1, 1991 through July 31, 2004. The claimant's rate of pay was \$5,173.00 per month or \$1,193.77 per week. A couple days after his separation from employment, the claimant received accrued vacation pay totaling \$11,818.70.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 1, 2004. His weekly benefit amount is \$322.00. When he filed for unemployment insurance benefits, he reported the vacation pay he had received. The Agency representative told him the vacation pay would be attributed to the week ending August 7, unless the employer timely returned the notice of claim and checked that he had received vacation pay, which they sometimes did and sometimes did not do. The claimant checked back later and was mistakenly informed that the employer had not reported the vacation pay.

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 August 1 through October 10, 2004, as the period to which the vacation pay was to apply.

#### REASONING AND CONCLUSIONS OF LAW:

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

Unused 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 August 1 to October 10, 2004. This was a slight miscalculation since, based on the claimant's rate of pay of \$1,193.77 per week, the claimant received 9.9 weeks of vacation pay. As a result, the claimant received vacation pay in excess of his weekly benefit amount for weeks ending August 7 through October 9, 2004. He is ineligible for benefits for that period.

Unfortunately, the law makes it inevitable that some claimants who do exactly what they are told to do are overpaid benefits. This is because the statute and rule direct claimants to report their vacation pay during the first week they file for benefits but allows an employer to later report the vacation pay should be applied over the course of more than one week. Finally, because the process of getting the information from the employer and allowing the claimant to reply to the information is time consuming, benefits are often paid out before the vacation pay issue is resolved.

#### DECISION:

The unemployment insurance decision dated September 9, 2004, reference 01, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the weeks ending August 7 through October 9, 2004, due to the receipt of vacation pay.

saw/b