**Appeal Number:**      06A-UI-01482-ET
**OC:  12-25-0        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, 2nd 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.

**DONNA SCHMIDT**
**532 O'NEILL ST**
**DUBUQUE  IA  52001**

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.

**FLEXSTEEL INDUESTRIES INC**
**PO BOV 877**
**DEBUQUE  IA  42001**

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 filed a timely appeal from a decision dated February 1, 2006, reference 02, that deducted vacation pay from benefits.  After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 24, 2006.  The claimant participated in the hearing.  Sherri Droessler, Human Resources Secretary, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:  The claimant retired from Flexsteel Industries on December 30, 2006, and received holiday pay for December 26, 2005, in the amount of $94.13 based upon a rate of pay

at $11.75 per hour.  The employer was on a plant shutdown the week between Christmas and New Year and the claimant's holiday pay covered the day after Christmas.  She reported $80.00 for that week but later learned she made $94.13.  She also received vacation pay at the end of the shutdown.  That vacation was given to her for the vacation she would have earned or carried over in 2006 and did not have any connection to the week of the plant shutdown, the only week the claimant made a claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay was not deducted for the correct period.

Iowa Code Section 96.5-7 provides:

> An individual shall be disqualified for benefits: …
>
> 7. Vacation pay.
>
> a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.
>
> b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.
>
> c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted.  Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.
>
> d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not

designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

871 IAC 24.16(3) provides:

(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff for the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

The claimant received one day of holiday pay for December 26, 2005, but did not receive her vacation pay at that time when the plant was on a shutdown. She applied for unemployment insurance benefits for the week of the shutdown and indicated she was paid $80.00 rather than the $94.13 she actually received. The vacation pay received by the claimant came after her retirement when she was no longer collecting benefits as she only applied for benefits during the one week plant shutdown.

DECISION:

The February 1, 2006, reference 02, decision is modified in favor of the claimant. The claimant's vacation pay was not deducted for the correct period.

je/s