

**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**

**DENNIS E RANDALL
1547 5TH AVE SE
CEDAR RAPIDS IA 52403**

**CEDAR RAPIDS DODGE INC
1919 DODGE RD NE
CEDAR RAPIDS IA 52402**

**Appeal Number: 04A-UI-00667-SWT
OC 12/23/03 R 01
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
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 15, 2004, reference 01, that concluded he was overpaid \$100.00 unemployment insurance benefits for the week ending January 10, 2004, due to the receipt of vacation pay. A telephone hearing was held on February 11, 2004. The claimant participated in the hearing. Jamie Sego 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 through December 15, 2003. The claimant's rate of pay was \$15.00 per hour. At the time of his separation from employment, the claimant received vacation pay of \$1,497.60, which represented 99.84 hours of vacation.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 21, 2003. 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 December 16, 2003, through January 5, 2004, as the period to which the vacation pay was to apply and stated that holidays were excluded in applying the vacation pay. The claimant did not receive holiday pay for December 25 and January 1, but would have received such pay if he had worked through that time.

During the hearing, the employer agreed that the vacation pay should have been applied to December 25 and January 1, which would have caused the vacation pay to be applied to the period from December 16, 2003, through January 1, 2004. The claimant agreed with this allocation.

REASONING AND CONCLUSIONS OF LAW:

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

Under the unemployment insurance law, an individual is disqualified from receiving unemployment insurance benefits for any week in which he claims unemployment insurance benefits and has vacation pay attributable to the same week. Iowa Code Section 96.5-7. Employer is permitted to designate the period to which the vacation pay is attributable if the designation is made within ten calendar days after the employer receives notice of the filing of the individual's claim. 871 IAC 24.16(1).

In this case, the claimant received vacation pay and the employer timely designated the period to which the pay was attributable as December 16, 2003 to January 5, 2004. The employer and claimant, however, agreed that the pay should have been applied to the period from December 16, 2003 through January 1, 2004. The claimant was ineligible for unemployment insurance benefits through the week ending January 3, 2004. As a result, the claimant was not overpaid any unemployment insurance benefits for the week ending January 10, 2004.

DECISION:

The unemployment insurance decision dated January 15, 2004, reference 01, is reversed. The claimant was not overpaid any unemployment insurance benefits for the week ending January 10, 2004.

saw/kjf