

**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**

**TAMI S KUEHL  
PO BOX 125  
WALL LAKE IA 51466**

**IOWA SEL FARMS INC/IASEL FARMS LP  
IOWA SELECT FARMS LP  
811 S OAK  
IOWA FALLS IA 50126-8003**

**Appeal Number: 04A-UI-02997-B4T  
OC: 02-01-04 R: 01  
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 96.6-2 – Whether the Claimant Filed a Timely Appeal  
Section 96.5-7 – Whether the Vacation Pay was Deducted for the Correct Period

STATEMENT OF THE CASE:

Tami S. Kuehl appealed from an unemployment insurance decision dated March 4, 2004, reference 01, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits for the one week ending February 7, 2004 because the records indicate she was receiving or entitled to receive vacation pay considered to be wages which equaled or exceeded the claimant's weekly benefit amount.

A consolidated telephone conference hearing was scheduled and held on April 6, 2004, pursuant to due notice. Tami S. Kuehl participated. Mercedes Guerrero, Senior Human Resources Specialist, participated on behalf of the employer.

Claimant's Exhibit A was admitted into evidence. Official notice was taken of the unemployment insurance decision dated March 4, 2004, reference 01, together with the pages attached thereto (9 pages in all).

**FINDINGS OF FACT:**

The administrative law judge, having examined the entire record in this matter, finds that:

Timeliness of Appeal Issue:

An examination of the claimant's letter of appeal (Exhibit A) discloses that a Workforce Development employee caused the claimant to file an untimely appeal. The administrative law judge determines therefore that Tami S. Kuehl filed a timely appeal to the decision under consideration and the Workforce Development Department has jurisdiction of the parties hereto and of the subject matter hereof necessary to enter upon a determination relating to whether or not vacation pay was deducted for the correct period.

Whether Vacation Pay was Deducted for the Correct Period:

Tami S. Kuehl was employed with Iowa Select Farms LP from February 22, 2000 through February 2, 2004 as a technician. The claimant was laid off on February 2, 2004 due to a lack of work. Subsequently, the claimant filed an initial claim for benefits having an effective date of February 1, 2004. A notice of claim was mailed to the employer on February 9, 2004 and a timely protest filed which indicated the claimant was paid vacation pay of 40 hours in the amount of \$537.09. The claimant reported the vacation pay during the benefit week ending February 28, 2004 and an offset was accomplished by the Workforce Development Department in the amount of \$266.00. The claimant received a check in the amount of \$705.30 which included vacation pay in the amount of \$537.09. Said amount was made applicable to the benefit week ending February 7, 2004 which would exceed the amount due to the claimant as benefits for said benefit week.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The record in this matter establishes that the claimant did, in fact, file a timely appeal to the decision under consideration and the Workforce Development Department has jurisdiction of the parties hereto and of the subject matter hereof necessary to enter upon a determination relating to the issue as to whether or not the claimant was eligible to receive benefits for the one week ending February 7, 2004.

Whether Vacation Pay was 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.

The evidence in the record establishes that the claimant received vacation pay in the amount of \$537.09 during the benefit week ending February 28, 2004. Vacation pay was properly applicable to the benefit week ending February 7, 2004 and would have deprived the claimant from receiving unemployment insurance benefits in the amount of \$266.00. Said amount of \$266.00 was offset during the benefit week ending February 28, 2004 and the claimant is no longer overpaid benefits.

The administrative law judge concludes that a timely appeal was filed from the decision of the representative dated March 4, 2004. Tami S. Kuehl is not eligible to receive unemployment insurance benefits for the one week ending February 7, 2004.

**DECISION:**

The unemployment insurance decision dated March 4, 2004, reference 01, is affirmed. The claimant is not entitled to unemployment insurance benefits for the week ending February 7, 2004.

tjc/b