

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

KENNETH R MCDONALD
3419 MASON ST
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IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-00668-SWT
OC: 11/27/05 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, 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 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 23, 2005, reference 02, that concluded the claimant was ineligible for benefits for the week ending December 3, 2005, due to the receipt of vacation pay. A telephone hearing was held on February 6, 2006. The claimant participated in the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a cook from March 1995 to November 23, 2005. He filed a new claim for unemployment insurance benefits with an effective date of November 27, 2005. His weekly benefit amount was determined to be \$337.00. The claimant received a check for unused vacation pay on December 7, 2005, totaling \$4,647.03. The claimant

reported this payment on his claim for the week ending December 10, 2005, and he was not paid any benefits for that week.

When the employer submitted its protest, it reported that the claimant had received \$4,647.03 in vacation pay on December 7, 2005. The employer did not designate the dates to which the vacation pay was to apply.

An unemployment insurance decision was mailed to the claimant's last known address of record on December 23, 2005. The decision concluded the claimant was ineligible for benefits for the week ending December 3, 2005, due to the receipt of vacation pay and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by January 2, 2006.

The claimant did not receive the decision within the ten-day period for appealing the decision because he had moved to a different residence. He filed a written appeal on January 17, 2006, a couple days after he had received the decision in the mail.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired. The claimant, however, did not receive the decision until after the deadline had expired. Since he did not have a reasonable opportunity to file a timely appeal, the appeal is considered to have been filed timely.

The next issue is whether the vacation pay was properly deducted.

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 vacation pay must be divided by five and applied to the first five work days following the claimant's last day of work because the employer did not designate the dates to which the vacation was to be applied. The amount of vacation pay, \$4,647.03, divided by five equals \$929.40. This means that \$929.40 per day would apply to November 24 and 25 (\$1,858.81) and to November 28, 29, and 30 (\$2,788.22). This would mean that the claimant was ineligible for benefits for the week ending December 3 because his vacation pay was over his weekly benefit amount. This also means that the claimant was underpaid \$337.00 during the week ending December 10. The Agency has already taken care of this because they issued a special payment on December 27 and then kept it to repay the overpayment for the week of December 3.

DECISION:

The unemployment insurance decision dated December 23, 2005, reference 02, is affirmed. The claimant is ineligible to receive unemployment insurance benefits for the week ending December 3, 2005, due to a deduction for vacation pay.

saw/pjs