

**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**

**SCOTT M WEILER
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**IOWA STATE UNIVERSITY
RECRUITMENT & EMPLOYMENT OFFICE
3810 BEARDSHEAR HALL
AMES IA 50011**

**Appeal Number: 04A-UI-05824-H2T
OC 11-30-03 R 02
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 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 14, 2004, reference 03, decision that found his vacation pay deducted for the correct period. After due notice was issued, a hearing was held on June 17, 2004. The claimant did participate. The employer did participate through Marlene Burkeheimer, Human Resources Specialist. Claimant's Exhibits A and B were received. Department's Exhibit D-1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated on November 24, 2003, and received vacation pay in the amount of \$3571.00. The employer did not designate the period of time to which the vacation pay was to be applied. The claimant and the employer at hearing each admit that the claimant was paid vacation pay upon his separation. Based upon the calculations set out in Department's Exhibit D-1, it is found that the claimant received \$3571.00 of vacation pay. After reporting the vacation pay to the Agency, the employer later sent a fax to the Agency indicating it no longer wished to report vacation pay for the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the vacation pay was deducted for the correct period.

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While the employer alleges that they had no intention of reporting the claimant's receipt of vacation pay, they did in fact make the report to the agency. Once the agency received the information the agency was then under an obligation to investigate whether the claimant did in fact receive vacation pay. At hearing neither the claimant nor the employer denied the claimant's receipt of \$3,571.00 in vacation pay benefits. The employer's withdrawal of a protest is irrelevant to a factual determination of eligibility for benefits. Kehde v. IDJS, 318 N.W. 2d 202 (Iowa 1982). The law is clear that the employer's protest is irrelevant to the determination and the law also clearly provides that vacation pay benefits must be deducted on a dollar per dollar basis from any unemployment insurance benefits to which the claimant may be entitled. It is axiomatic that the parties have an obligation to provide truthful information regarding the claim. Because the employer did not designate a time period to which the vacation pay is to apply, the entire amount was correctly deducted from one week of benefits following the separation. The vacation pay was correctly deducted for the week ending May 15, 2004.

DECISION:

The May 14, 2004, reference 03, decision is affirmed. The vacation pay was deducted for the correct period.

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