

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

PHILLIP J TEMPLETON
19833 – 168TH AVE
MYSTIC IA 52574

EXCEL CORPORATION
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06599-AT
OC: 05-09-04 R: 03
Claimant: Appellant (4)

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:

Phillip J. Templeton filed a timely appeal from an unemployment insurance decision dated June 7, 2004, reference 04, which denied benefits to him for the week ending May 22, 2004 upon a finding that he was entitled to receive vacation pay for that week in an amount equaling or exceeding his weekly benefit amount. After due notice was issued, a telephone hearing was held July 9, 2004 with Mr. Templeton participating. Excel Corporation did not respond to the hearing notice.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Phillip J. Templeton's last day of work with Excel Corporation was Wednesday, May 12, 2004. He was paid for 18.33 hours of work that week and received vacation pay in the gross amount of \$504.78. The company did not designate the period of time to which the vacation pay was to be attributed. Mr. Templeton's weekly benefit amount for unemployment insurance purposes is \$298.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Templeton should receive full or partial unemployment insurance benefits for the week ending May 22, 2004. The evidence establishes that he should receive partial benefits.

Iowa Code Section 96.5-7 requires that vacation pay be deducted dollar for dollar from an individual's unemployment insurance benefits. In cases such as this in which the employer has not designated the period to which vacation pay is to be attributed, it is attributed to the normal workweek immediately following the separation. The evidence here establishes that 21.67 hours of the vacation pay should be attributed to the week ending May 15, 2004. The remaining 18.33 hours should be attributed to the week in question, the week ending May 22. The claimant's vacation pay spread over 40 hours amounts to \$12.62 per hour. \$22.62 per hour times 18.33 hours results in \$231.00 being deducted from Mr. Templeton's weekly benefit amount. He is entitled to receive \$67.00 in benefits.

DECISION:

The unemployment insurance decision dated June 7, 2004, reference 04, is modified. The claimant is entitled to receive \$67.00 in partial benefits for the week ending May 22, 2004.

tjc/b