

**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**

**GARY D NIEHAUS
4893 NE 38TH ST
DES MOINES IA 50317-8923**

**TITAN TIRE CORPORATION
2345 E MARKET ST
DES MOINES IA 50317**

**Appeal Number: 06A-UI-07885-CT
OC: 12/25/05 R: 02
Claimant: Appellant (3)**

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 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Gary Niehaus filed an appeal from a representative's decision dated August 2, 2006, reference 01, which held he had been overpaid \$58.00 in job insurance benefits because of his receipt of vacation pay from Titan Tire Corporation (Titan). After due notice was issued, a hearing was held by telephone on August 24, 2006. Mr. Niehaus participated personally. The employer participated by Joyce Kain, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Titan was on a scheduled shut-down from July 3

through July 14, 2006. One week of vacation time must be used during the shut-down. Mr. Niehaus received vacation pay for July 3, 5, 6, 7 and 10. He received holiday pay for July 4. The holiday pay was \$141.60. The total vacation payout was \$708.00.

Mr. Niehaus filed an additional claim for job insurance benefits effective July 9, 2006. He reported \$141.00 as pay for the week ending July 15, 2006. He was paid \$264.00 in job insurance benefits for the week.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Niehaus has been overpaid job insurance benefits for the week ending July 15, 2006. He had only one day of pay for the week, the pay he received for July 10. The pay was vacation pay rather than holiday pay. Holiday pay is attributed to the holiday it was intended to cover. In this case, it was the July 4 holiday. Holiday pay is treated differently than vacation pay. Vacation pay is deducted on a dollar-for-dollar basis. 871 IAC 24.16. Holiday pay is deducted using the same formula used to determine the effect of wages on the weekly benefit amount. 871 IAC 24.13(2)a.

The \$141.60 Mr. Niehaus received as vacation pay for July 10 is deductible from his job insurance benefits on a dollar-for-dollar basis, after rounding to the nearest whole dollar. Therefore, he was eligible to receive \$182.00 in job insurance benefits for the week ending July 15, 2006 ($\$324.00 - \$142.00 = \$182.00$). Because he received \$264.00, he has been overpaid \$82.00 for the week.

DECISION:

The representative's decision dated August 2, 2006, reference 01, is hereby modified. Mr. Niehaus has been overpaid \$82.00 in job insurance benefits for the week ending July 15, 2006.

cfc/pjs