

**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**

**DARCI J KITCHEN
410 E JEFFERSON ST
WINTERSET IA 50273**

**GENESIS DEVELOPMENT
824 ALLEN ST
BOONE IA 50036**

**Appeal Number: 04A-UI-05676-AT
OC: 04-18-04 R: 03
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 96.7 – Vacation Pay

STATEMENT OF THE CASE:

Darci J. Kitchen filed a timely appeal from an unemployment insurance decision dated May 10, 2004, reference 02, which denied benefits to her for the three weeks ending May 8, 2004 upon a finding that she was entitled to receive vacation pay in an amount equaling or exceeding her weekly benefit amount for those weeks. After due notice was issued, a telephone hearing was held June 9, 2004 with Ms. Kitchen participating. Site Administrator Janet Strange participated for the employer, Genesis Development. This matter is considered on a consolidated record with 04A-UI-05675-AT. The administrative law judge takes official notice of Agency benefit payment records.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Darci J. Kitchen's employment with Genesis Development ended on April 13, 2004. In connection with her separation from employment, she received vacation pay in the gross amount of \$1,476.00, representing 150 hours of accrued but unused vacation pay. The weekly amount of vacation pay exceeds Ms. Kitchen's weekly benefit amount for unemployment insurance purposes.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Kitchen is eligible for unemployment insurance benefits for the three weeks ending May 8, 2004. She is not. Iowa Code Section 96.5-7 deals with the treatment of vacation pay received by an individual in connection with the individual's separation from employment. The statute requires that vacation pay be deducted dollar for dollar from an individual's unemployment insurance benefits for the week or weeks to which the vacation pay is attributed. The evidence in this record establishes that Ms. Kitchen received vacation pay covering 150 hours and that the weekly vacation pay amount exceeded her unemployment insurance weekly benefit amount. Therefore, benefits must be withheld for the three weeks ending May 8, 2004.

DECISION:

The unemployment insurance decision dated May 10, 2004, reference 02, is affirmed. The claimant is ineligible for unemployment insurance benefits for the three weeks ending May 8, 2004.

tjc/tjc