

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

PATRICIA A MILLER
1639 – 8½ AVE N
FORT DODGE IA 50501-2709

G P DISTRIBUTING INC
SHOPPERS SUPPLY
3112 – 5TH AVE S
FORT DODGE IA 50501

Appeal Number: 06A-UI-07067-DWT
OC: 05/28/06 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 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Patricia A. Miller (claimant) appealed a representative's July 3, 2006 decision (reference 02) that concluded she was not eligible to receive benefits for the week ending June 10, because she received or was entitled to receive vacation pay that should be attributed to this week from Shoppers Supply (employer) which exceeded her maximum weekly benefit amount. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should any portion of the vacation pay the claimant received be attributed to the week ending June 10, 2006?

Is the claimant eligible to receive benefits for the week ending June 10, 2006?

FINDINGS OF FACT:

When the claimant worked for the employer, she earned \$8.00 an hour and worked 40 hours a week. The last day the claimant worked for the employer was May 30, 2006. The claimant did not know the employer would pay her holiday pay or for four days of work the week of May 29. When the claimant's employment ended she also received five days of vacation pay.

The claimant established a claim for unemployment insurance benefits during the week of May 28, 2006. The claimant's maximum weekly benefit amount is \$208.00.

REASONING AND CONCLUSIONS OF LAW:

When an employer makes a vacation pay payment, such payment is deemed as wages and must be deducted from a claimant's maximum weekly benefit amount. Iowa Code § 96.5-7. If an employer does not designate the period of time vacation pay is to be attributed, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked. 871 IAC 24.16(3).

The employer paid the claimant her wages through June 1, 2006. This means eight hours of vacation pay should be attributed to June 2 and four days of vacation pay (\$256.00) should be attributed to the week ending June 10, 2006. Since the claimant received more than \$208.00 vacation for the week ending June 10, 2006, she is not eligible to receive benefits during this week.

DECISION:

The representative's July 3, 2006 decision (reference 02) is affirmed. Four days of vacation pay, or \$256.00, must be attributed to the week of June 4, 2006. Therefore, the claimant is not eligible to receive any benefits for the week ending June 10, 2006.

dlw/kjw