

**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**

**JULIE A PESTKA
15010 – 305TH ST
LONG GROVE IA 52756**

**IOWA DISCOUNT SHIPPERS INC
PO BOX 74882
CEDAR RAPIDS IA 52407-4882**

**Appeal Number: 04A-UI-04482-AT
OC: 03-28-04 R: 04
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 96.5-5 – Severance Pay

STATEMENT OF THE CASE:

Julie A. Pestka filed a timely appeal from an unemployment insurance decision dated April 20, 2004, reference 03, which denied benefits for the four weeks ending May 1, 2004 upon a finding that she had received vacation pay for the weeks in question. After due notice was issued, a telephone hearing was held May 7, 2004 with Ms. Pestka participating. President Sarah Ordover participated for the employer, Iowa Discount Shippers, Inc. Exhibits 1 and 2 were admitted into evidence.

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: Julie A. Pestka's employment with Iowa Discount Shippers, Inc. ended on April 2, 2004. The company offers no vacation pay. On April 30, 2004 Ms. Pestka received a payment of \$1,000.00 covering the period April 15 through April 30, 2004. This payment was in addition to the commissions, which Ms. Pestka had earned during her employment.

REASONING AND CONCLUSIONS OF LAW:

It is clear that Ms. Pestka received no vacation pay. The real question is whether Ms. Pestka received severance pay, which must be deducted dollar for dollar from unemployment insurance benefits pursuant to Iowa Code Section 96.5-5. The evidence establishes that Ms. Pestka received \$1,000.00 in addition to her earned commissions and that the employer has attributed that extra payment to the period April 15 through April 30, 2004. This means that benefits must be withheld for the two weeks ending May 1, 2004, because the amount of severance pay attributed to each of those weeks exceeds Ms. Pestka's unemployment insurance weekly benefit amount. She is entitled to partial benefits in the gross amount of \$136.00 for the week ending April 17, 2004 because the severance pay attributable to that week is less than her weekly benefit amount. On the other hand, she is entitled to her full weekly benefit amount for the week ending April 10, 2004.

DECISION:

The unemployment insurance decision dated April 20, 2004, reference 03, is modified. The claimant is entitled to receive her full weekly benefit amount for the week ending April 10, 2004. She is entitled to receive benefits in the gross amount of \$136.00 for the week ending April 17, 2004, and she is not eligible for unemployment insurance benefits for the two weeks ending May 1, 2004.

tjc/kjf