

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

KIM S MCCLEARY
1811 HOUSER ST
MUSCATINE IA 52761

FAST CASH OF AMERICA INC
137 COLORADO ST
MUSCATINE IA 52761

Appeal Number: 04A-UI-04924-AT
OC: 03-28-04 R: 04
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:

Kim S. McCleary filed a timely appeal from an unemployment insurance decision dated April 20, 2004, reference 03, which denied benefits for the week ending April 3, 2004 upon a finding that she was entitled to receive vacation pay in an amount equaling or exceeding her weekly benefit amount for that week. Due notice was issued for a telephone hearing to be held May 21, 2004. Although Ms. McCleary provided a telephone number at which she could be contacted, that number was not answered when called at the time of the hearing. The employer elected to rely upon information provided to the Agency at the time that Ms. McCleary filed her original claim for benefits.

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Kim S. McCleary received vacation pay in the gross amount of \$950.00 in connection with her separation from employment. The employer attributed the vacation pay to the workweeks beginning March 22, 2004 and ending April 2, 2004. Although Ms. McCleary's employment had ended mid-week, she was paid her full weekly salary for the week ending March 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. McCleary's receipt of vacation pay delays the commencement of her unemployment insurance benefits. It does.

Iowa Code Section 96.5-7 deals with the unemployment insurance treatment of vacation pay received in connection with a 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 statute allows the employer to set the dates to which the vacation pay is attributed.

The evidence in this record establishes that the employer attributed the vacation pay to the two calendar weeks following Ms. McCleary's separation from employment because it paid her her full weekly salary although discharging her mid-week. Since the weekly amount of vacation pay exceeded Ms. McCleary's weekly unemployment insurance benefits she is not eligible for any benefits for the week ending April 3, 2004. The administrative law judge notes that Ms. McCleary did not file her original claim for benefits until the week of March 28, 2004.

DECISION:

The unemployment insurance decision dated April 20, 2004, reference 03, is affirmed. The claimant is ineligible for unemployment insurance benefits for the week ending April 3, 2004.

tjc/kjf