§ 322.4 Consideration of evidence.

(a) Initial proof. A claimant’s certification that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost for any such day shall constitute sufficient evidence for an initial finding that no remuneration is payable or has accrued to him or her with respect to such day, unless a base year employer reports that he or she worked on days claimed or received payments that constitute remuneration as defined in this part, or unless there is other conflicting evidence.

(b) Investigation. When there is a question as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

§ 322.5 Payments under vacation agreements.

(a) General. In ascertaining the accrual of remuneration under a vacation agreement, consideration shall be given to the applicable agreements and practices, the interpretations of such agreements and practices developed by the parties, and the actions of the parties pursuant thereto. When there is information that an employee has received or is to receive payment under a vacation agreement, such payment shall, in the absence of evidence to the contrary, be considered to be remuneration with respect to the days to which the payment is assigned.

(b) Vacation pay. If an employee takes a vacation in accordance with a vacation agreement, the payment for such vacation shall constitute remuneration with respect to the days in the vacation period for which the payment is made. An employee shall be regarded as taking a vacation when, in accordance with the applicable agreements and practices (1) he is absent from work during a scheduled or assigned vacation period; (2) he is required to take his vacation with pay while he is on furlough; or (3) he chooses to take his vacation with pay while he is unemployed or absent from work due to illness or other personal circumstances.

(c) Pay in lieu of vacation. If a payment in lieu of vacation is made to an employee under a vacation agreement such payment shall not constitute remuneration with respect to any particular day or days. A payment under a vacation agreement shall be regarded as in lieu of vacation if:

1. The payment is made at the end of the vacation year to an employee who did not take his vacation during such year;
2. The payment is made after the employee’s death, or after he ceased service for the purpose of receiving an annuity, and the payment is credited to the employee’s last day of service; or
3. It is otherwise established that the parties intended the payment to be in lieu of vacation, without reference to any particular period.

§ 322.6 Pay for time lost.

(a) Definition. The term “pay for time lost” means any payment made to an employee with respect to an identifiable period of time during which the employee was absent from the active service of the person or company making the payment, including absence on account of personal injury. The entire amount paid to an employee who was absent on account of personal injury is pay for time lost if such amount includes pay for time lost, unless at the time of payment the parties, by agreement, specify a different amount as the amount of the pay for time lost and the period of time covered by such pay. The amount allocated to time lost is remuneration for every day in the period of time lost. The amount of a payment for personal injury that is apportioned to factors other than time lost.
is, nevertheless, a portion of “dam-
ages” for the purposes of part 341 of
this chapter.

(b) Employment relationship required.
Pay for time lost shall not be deemed
to have been earned on any day after
the day of the employee’s resignation
or other termination of his employ-
ment relationship.

(c) Initial evidence. A report that an
employee has received or is to receive
pay for time lost shall, in the absence
evidence to the contrary, be consid-
ered sufficient for a finding that remu-
neration is payable with respect to
each day in the period to which the pay
is assigned.

[Board Order 59–73, 24, 2487, Mar. 31, 1959, as
amended at 65 FR 14460, Mar. 17, 2000]

§ 322.8 Miscellaneous income.

(a) Income from self-employment. In de-
termining whether income from self-
employment is remuneration with re-
spect to a particular day or particular
days, consideration shall be given to
whether, and to what extent, (1) such
income can be related to services per-
formed on the day or days and (2) the
expenses of the self-employment can be
attributed to the day or days. Income
from services performed by an indi-
vidual on a farm which he owns or
rents, or in his own mercantile estab-
ishment, ordinarily is not remunera-
tion with respect to any day.

(b) Income from investment. Income in
the form of interest, dividends, and
other returns on invested capital which
is not coupled with the rendition of
personal services shall not be regarded
as remuneration.

(c) Commissions on sales. Commissions
on sales shall be regarded as remunera-
tion with respect to the day or days on
which sales are made.

(d) Payments for service as a public offi-
cial. In determining whether income for
service as a public official is remunera-
tion and, if so, the particular day or
days with respect to which such remu-
neration is payable or accrues, consid-
eration shall be given to such factors
as—
(1) The amount of the income;
(2) The terms and conditions of pay-
ment;
(3) The character and extent of the
services rendered;
(4) The importance, prestige, and re-
sponsibilities attached to the position;
(5) The day or days on which services,
or readiness to perform services, are re-
quired; and
(6) The provisions of the applicable
statutes.

(e) Payments to local lodge officials. A
payment by a local lodge of a labor or-
ganization to an employee for services
as a local lodge official shall be re-
garded as subsidiary remuneration if
such payment does not exceed an aver-
age of $15 a day for the period with re-
spect to which it is payable or accrues,
unless there is information that the