

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANH DAO T NGUYEN
Claimant

APPEAL NO. 10A-UI-06175-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 12/06/09
Claimant: Appellant (2)

Section 96.5-7 – Vacation Pay
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Anh Dao T. Nguyen filed an appeal from an unemployment insurance decision dated March 23, 2010, reference 01, that denied benefits to her for the week ending January 9, 2010 upon a finding that she was entitled to receive vacation pay attributed to that week. After due notice was issued, a telephone hearing was held June 10, 2010 with Ms. Nguyen participating. Teresa Feldmann participated for the employer, IAC Iowa City. Lam Nguyen served as the interpreter. Exhibits One and D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Did the claimant receive vacation pay attributed to the week ending January 9, 2010?

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: Anh Dao T. Nguyen was unemployed due to a temporary layoff during the week ending January 9, 2010. She received unemployment insurance benefits for that week. On or about January 15, 2010, she received a payout for unused 2009 vacation hours. The employer, IAC Iowa City, did not intend that the vacation pay for 2009 be used to offset 2010 unemployment insurance benefits.

The claimant does not read and comprehend written English well. She did not initially realize that she could file an appeal from the March 23 decision. She filed promptly after learning that she could do so.

REASONING AND CONCLUSIONS OF LAW:

It is clear from the evidence in this record that the claimant is not fluent in written or spoken English. The administrative law judge concludes that the claimant did not initially realize that

she could file an appeal from the March 23 fact-finding decision. Since she promptly filed an appeal after learning of her right to do so, the administrative law judge accepts the appeal as timely.

Iowa Code section 96.5-7 states that vacation pay attributed to a specific week shall offset unemployment insurance benefits paid for that week. The employer's witnesses testified that the employer did not intend for the 2009 vacation payout to be used to offset 2010 unemployment insurance benefits. Under these circumstances, the administrative law judge concludes that the claimant was eligible to receive unemployment insurance benefits for the week ending January 9, 2010.

DECISION:

The unemployment insurance decision dated March 23, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits for the week ending January 9, 2010, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs