

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILL Y HERNANDEZ
Claimant

APPEAL NO. 10A-UI-06404-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

OC: 12/20/09
Claimant: Appellant (2)

Section 96.3-7 – Recovery of Overpayments
Section 96.5-7 – Vacation Pay
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Will Y. Hernandez filed an appeal from an unemployment insurance decision dated March 24, 2010, reference 01, that ruled he had been overpaid \$285.00 in unemployment insurance benefits for the week ending January 9, 2010 upon a finding that he had incorrectly reported vacation pay from IAC Iowa City. After due notice was issued, a telephone hearing was held May 24, 2010 with Mr. Hernandez participating and with Teresa Feldmann participating for the employer. Exhibits One and D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?
Has the claimant been overpaid due to incorrectly reporting vacation pay?

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: Will Y. Hernandez was on a temporary layoff during the week ending January 9, 2010. He received unemployment insurance benefits for that week. On January 15, 2010, he received vacation pay in the amount of \$285.00 from IAC Iowa City. The vacation pay was for unused vacation hours from 2009. The employer reported the vacation pay to the agency, believing that it was required to do so, but did not intend for the 2009 vacation pay to offset 2010 unemployment insurance benefits.

Mr. Hernandez did not receive the decision dated March 24, 2010. He first learned of the situation when he received an overpayment notice, in essence a billing statement. At about the same time he received a letter from the company encouraging him to file an appeal. He did so promptly.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. The evidence persuades the administrative law judge that additional time for this appeal may be granted since Mr. Hernandez did not receive the March 24, 2010 decision. The evidence persuades the administrative law judge that the claimant promptly filed an appeal after learning of the overpayment and being encouraged by his employer to file an appeal.

The evidence also establishes that the employer did not intend the vacation pay out for 2009 to be used as an offset against 2010 unemployment insurance benefits. From this the administrative law judge concludes that the claimant was entitled to receive the unemployment insurance benefits he received for the week ending January 9, 2010. He has not been overpaid.

DECISION:

The unemployment insurance decision dated March 24, 2010, reference 01, is reversed. The claimant has not been overpaid for the week ending January 9, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs