

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA L BOYD**  
Claimant

**APPEAL NO. 10A-UI-06374-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY LLC**  
Employer

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

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

**STATEMENT OF THE CASE:**

Debra L. Boyd filed an appeal from an unemployment insurance decision dated March 23, 2010, reference 02, that ruled she had been overpaid unemployment insurance benefits for the two weeks ending January 16, 2010 upon a finding that she was entitled to receive vacation pay attributed to those weeks. After due notice was issued, a telephone hearing was held June 10, 2010 with Ms. Boyd participating. Teresa Feldmann participated for the employer, IAC Iowa City. Exhibit D-1 was admitted into evidence.

**ISSUES:**

Has the claimant filed a timely appeal?

Did the claimant receive vacation pay attributed to the two weeks ending January 16, 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: Debra L. Boyd filed a claim for unemployment insurance benefits effective December 20, 2009 due to a temporary layoff. She was on temporary layoff for the week ending January 3, 2010. In mid January she received a payout for unused 2009 vacation hours. IAC Iowa City reported this information to the agency in response to the agency's request. The company did not intend for the vacation pay to be used as an offset against unemployment insurance benefits.

The claimant went to her local office within ten days after the issuance of the March 23, 2010 fact-finding decision. She was told at that time that an appeal would be futile. She filed an appeal later upon learning that it was her right to do so.

**REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the appeal can be accepted as timely. Although Iowa Code section 96.6-2 gives a person only ten days from the date of a fact-finding decision to file an

appeal, additional time may be granted if the delay in filing the appeal is the fault of the U.S. Postal Service or the agency. See 871 IAC 24.35. The evidence in this record persuades the administrative law judge that the claimant would have filed a timely appeal but for misinformation from the agency. Under these circumstances, the appeal is accepted as timely.

According to Iowa Code section 96.5-7 vacation pay is to be deducted from unemployment insurance benefits for the week or weeks to which it is attributed. The employer's witness testified that the company did not intend that the vacation pay for unused hours from 2009 be used to offset unemployment insurance benefits in 2010. From this the administrative law judge concludes that the vacation pay should not be attributed to the two weeks ending January 16, 2010.

**DECISION:**

The unemployment insurance decision dated March 23, 2010, reference 02, is reversed. The claimant is entitled to receive unemployment insurance benefits for the two weeks ending January 16, 2010, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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