

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDMUNDO S ALVARADO
Claimant

APPEAL NO. 10A-EUCU-00488-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 01/11/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Edmundo S. Alvarado filed an appeal from an unemployment insurance decision dated March 24, 2010, reference 03, that ruled he had been overpaid \$129.00 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 June 11, 2010, with Mr. Alvarado participating. Teresa Feldmann participated for the employer, IAC Iowa City. Ike Rocha was the interpreter.

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: Edmundo S. Alvarado was on a temporary layoff during the week ending January 9, 2010. He received unemployment insurance benefits for that week. Approximately a week later, he received a payout from IAC Iowa City for unused vacation time in 2009. The employer did not intend that the payout be used to offset unemployment insurance benefits. It reported the information to the Agency only in response to a request from the Agency to do so.

After Mr. Alvarado received the decision ruling that he had been overpaid, he went to his local Workforce Development center. He was told that it would be futile to file an appeal.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He concludes that he does.

Although the statute gives only ten days for an appeal from a fact-finding decision, additional time may be granted if the delay is the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. The administrative law judge concludes that the claimant would have filed a timely appeal but for incorrect information from the Agency. Under these circumstances, the appeal is accepted as timely.

The remaining question is whether the claimant has been overpaid due to improperly reporting vacation pay. The employer's witness testified that the payout of unused 2009 vacation hours was not intended to offset 2010 unemployment insurance benefits. From this testimony, the administrative law judge concludes that the vacation pay should not be attributed to the week ending January 9, 2010. Mr. Alvarado did not need to report vacation pay for that week. He was entitled to receive his full weekly benefit amount. He has not been overpaid.

DECISION:

The unemployment insurance decision dated March 24, 2010, reference 03, is reversed. The claimant has not been overpaid for the week ending January 9, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw