

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIRK D RICH**  
Claimant

**APPEAL NO. 10A-UI-06484-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY**  
Employer

**Original Claim: 01/03/10  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Dirk D. Rich filed an appeal from an unemployment insurance decision dated March 16, 2010, reference 01, that denied benefits to him for the week ending January 9, 2010, upon a finding that he was entitled to receive vacation pay attributed to that week. After due notice was issued, a telephone hearing was held May 21, 2010, with Mr. Rich participating. Teresa Feldmann participated for the employer, IAC Iowa City. Employer Exhibit One and Exhibit D-1 were admitted into evidence.

**ISSUES:**

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

Has the claimant filed a timely appeal?

**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: On March 16, 2010, the Agency mailed two decisions to Dirk D. Rich. One advised him that he was ineligible to receive benefits for the week ending January 9, 2010, and the other advised him that he must repay the benefits he had received for that week. Mr. Rich did not receive those decisions. The first he learned of their existence was when he received a second billing notice from the Agency. This led him to contact the Agency office in Iowa City and to file the present appeal.

Mr. Rich was on a temporary layoff during the week ending January 9, 2010. He received unemployment insurance benefits for that week. In the middle of January 2010, IAC Iowa City paid out all unused vacation pay from 2009. Mr. Rich had not used all of his vacation hours and so he received vacation pay in the gross amount of \$362.16. The employer did not intend for the vacation pay to be used to offset unemployment insurance benefits to those employees on temporary layoff in January 2010.

**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 Iowa Code section 96.6-2 gives parties only ten days in which to file an appeal from fact-finding decision, the Iowa Administrative Code provides relief for those who file later appeals if the delay has been the fault of Iowa Workforce Development or the U.S. Postal Service. See 871 IAC 24.35. The evidence here persuades the administrative law judge that Mr. Rich did not file an appeal within ten days after the date of the fact-finding decision because he did not receive that decision. Since he filed his appeal within a reasonable amount of time after learning of the existence of the decision, the administrative law judge concludes that he does have jurisdiction to rule on the merits of the case.

Iowa Code section 96.5-7 provides that vacation pay is deductible from unemployment insurance benefits, provided the vacation pay is attributed by the employer to the week or weeks that the individual has received unemployment insurance benefits. Ms. Feldmann testified under oath that it was not the intention of the company that the vacation pay for 2009 be used to reduce unemployment insurance benefits paid to its employees in early 2010. Since the vacation pay was not to be attributed to the week ending January 9, 2010, Ms. Rich is entitled to receive benefits.

**DECISION:**

The unemployment insurance decision dated March 16, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw