

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MALY XAYASENE**  
Claimant

**APPEAL NO. 10A-UI-06222-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY**  
Employer

**OC: 01/11/09**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Maly Xayasene filed an appeal from an unemployment insurance decision dated February 2, 2010, reference 01, that held she was ineligible to receive unemployment insurance benefits 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 11, 2010 with Ms. Xayasene participating. Teresa Feldmann participated for the employer, IAC Iowa City. Som Baccam served as the interpreter.

**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: Maly Xayasene, an employee of IAC Iowa City, was on a temporary layoff during the week that ended January 9, 2010. She received unemployment insurance benefits for that week. Approximately one week later she also received from the company a payout for unused 2009 vacation hours. The employer reported the payout to the Agency at the Agency's request. It was not the employer's intent for the vacation pay to be attributed to the week ending January 9, 2010.

Ms. Xayasene's skills in English are limited. Upon receiving the adverse fact-finding decisions, she went first to her employer to see if an error had been made. She did not realize that she needed to file an appeal with the Agency as well.

**REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the appeal can be accepted as timely. From the evidence in this record the administrative law judge concludes that the claimant has limited English skills. He finds that the claimant acted with reasonable promptness after realizing that an appeal needed to be filed with the Agency rather than with the employer. Under these circumstances, the appeal is accepted as timely.

The remaining question is whether the vacation pay received by the claimant should be attributed to the week ending January 9, 2010. It should not. The employer's witness testified that it was not the intent of the company to use the vacation pay to offset unemployment insurance benefits and that the information was provided to the Agency only upon request. The administrative law judge concludes from this testimony that the vacation pay received by the claimant in mid-January 2010 was not to be attributed to the week ending January 9, 2010.

**DECISION:**

The unemployment insurance decision dated February 2, 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.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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