

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD F CHRISTOPHERSEN
Claimant

APPEAL NO. 09A-UI-08109-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALO COOP TELEPHONE ASSN
Employer

**Original Claim: 02/01/09
Claimant: Appellant (1)**

Section 96 .5-7 – Vacation Pay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Todd F. Christophersen (claimant) appealed a representative's May 20, 2009 decision (reference 03) that concluded he was not eligible to receive benefits for the weeks ending February 7, 14, 21, and 28, 2009, because he received vacation pay from Palo Coop Telephone Association (employer) that should be attributed to these weeks. A hearing was scheduled for June 30, 2009. The claimant appeared for the hearing with his attorney, Joe Bertroche. Dave Lowe, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

What week(s) should the claimant's vacation pay be attributed?

FINDINGS OF FACT:

The claimant's last day of work for the employer was January 26, 2009. The claimant established a claim for benefits during the week of February 1, 2009. His maximum weekly benefit is \$389.00. The claimant knew he would receive \$5,922.06 for unused vacation pay and \$2,423.08 for two weeks of severance pay.

On February 9, 2009, the claimant talked to a Workforce representative about the vacation and severance payment he received or would be receiving from the employer. The representative told the claimant she would make an entry showing he had received \$999.00 in vacation pay for the week ending February 7 and he should report \$999.00 on his claim for the week ending February 14, 2009. Based on this information, the claimant believed he was doing everything correctly.

The Workforce representative did not know the employer would timely report the claimant received \$5,922.06 in vacation pay that should be attributed to January 27 through February 27, 2009, and \$2,423.08 in severance pay that should be attributed to March 2 through 13, 2009.

On May 20, 2009, a representative's decision was mailed to the claimant and employer indicating the claimant was not eligible to receive benefits for the four weeks ending February 28, 2009. The claimant received this decision within a few days of it having been mailed to him. When the claimant received this decision, he was working a part-time job. The claimant started writing an appeal, but did not get it mailed until June 2, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the June 1, 2009 deadline for appealing expired. (The May 20 decision indicated the decision was final on May 30, but since this was a Saturday, the claimant had until Monday, June 1 to file a timely appeal.)

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not do so because he was busy working a part-time job.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the appeal.

In the alternative, if the claimant had filed a timely appeal, the law provides that vacation pay an employer is obligated to pay is deemed wages for unemployment insurance purposes and must be deducted if attributed to a week in which a claimant files a claim for benefits. Iowa Code § 96.5-7. If an employer does not designate a specific time to attribute to the vacation pay, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day of work. If the claimant does not claim benefits during the normal employer workweek immediately following the last day worked, the entire amount of the vacation pay shall not be deducted from any other week of benefits. 871 IAC 24.16(3). In this case, the representative assumed the employer would not designate the specific time to attribute the vacation pay.

When an employer properly notifies the Department the vacation pay is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the

vacation pay is exhausted. 871 IAC 24.16.1. Since the employer timely designated the vacation pay was to be attributed to January 27 through February 27, the Department must attribute the vacation pay to these days. This means the claimant received \$246.75 per day in vacation pay. For the week ending January 31, \$987.00 in vacation pay must be attributed to this week. For the weeks ending February 7, 14, 21 and 28, \$1,233.75 in vacation pay must be attributed to each of these weeks. Since the vacation pay attributed to each of these weeks exceeds the claimant's maximum weekly benefit amount, he is not legally entitled to receive benefit for these weeks.

DECISION:

The representative's May 20, 2009 decision (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of his appeal. The claimant remains ineligible to receive benefits for the weeks ending February 7, 14, 21, and 28, because the vacation pay attributed to these weeks exceeds his weekly benefit amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw