

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KE T TRUONG
Claimant

APPEAL NO. 10A-EUCU-00389-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 12/07/08
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Ke T. Truong filed an appeal from an unemployment insurance decision dated March 16, 2010, reference 01, that denied unemployment insurance benefits for the week ending January 9, 2010, upon a finding that Mr. Truong was entitled to receive vacation pay attributed to that week. After due notice was issued, a telephone hearing was held June 29, 2010, with Mr. Truong participating. Teresa Feldmann participated for the employer, IAC Iowa City. Lan Nguyen served as the translator. Claimant Exhibit D-1 was admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Was the claimant entitled to 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: Ke T. Truong was on a temporary layoff for the week ending January 9, 2010. He received unemployment insurance benefits in the amount of \$400.00 for that week. On January 15, 2010, he received a payout from his employer, IAC Iowa City, for unused 2009 vacation time. The company reported the vacation pay to the Agency only after being told that it was required to do so.

Mr. Truong has limited English skills. When he received the decisions on appeal, he did not realize that he had the right to file the appeal. Therefore, he repaid the money and took no further action until receiving written confirmation from the employer that it did not intend for the 2009 vacation payout to be used as an offset of unemployment insurance benefits. He promptly filed an appeal after receiving the notification.

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 appeal was not filed within the time limits specified in the employment security law, additional time may be granted for individuals possessing limited skills in the English language who do not realize immediately their legal rights. The administrative law judge concludes that Mr. Truong filed his appeal within a reasonable amount of time after learning of his right to do so. See 871 IAC 24.35. Under these circumstances, the administrative law judge has jurisdiction to rule on the merits of the case.

The remaining question is whether Mr. Truong received vacation pay from IAC Iowa City properly attributed to the week ending January 9, 2010. He did not.

The evidence in this record establishes that the employer did not intend for the 2009 vacation payout to be used as an offset against unemployment insurance benefits. It establishes that the company provided the information to the Agency after being told that it was required to provide it.

DECISION:

The unemployment insurance decision dated March 16, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits for the week ending January 9, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw