

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID K BOYD
Claimant

APPEAL NO. 10A-UI-06402-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

OC: 12/06/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

David K. Boyd filed an appeal from an unemployment insurance decision dated March 23, 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 24, 2010 with Mr. Boyd participating. Teresa Feldmann participated for the employer, IAC Iowa City. Exhibit One and D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Did the claimant receive vacation pay for 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: David K. Boyd was laid off by IAC Iowa City for the week ending January 9, 2010. On or about January 15, 2010 he received a payout of unused vacation pay from 2009. The employer did not intend for the 2009 vacation pay to offset unemployment insurance benefits in 2010.

When Mr. Boyd went to the Washington, Iowa office to file an appeal, he was discouraged from doing so. He filed later after receiving encouragement from the company to do so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the appeal can be accepted as timely. It can.

Although Iowa Code section 96.6-3 gives parties only ten days from the date of a fact-finding decision to file an appeal, additional time may be granted if the delay in appealing is the fault of

the Agency or the U.S. Postal Service. See 871 IAC 24.35. The claimant testified that he would have filed earlier but for being discouraged from doing so by the Washington, Iowa Workforce Development Center. Under these circumstances, his late appeal can be accepted as timely.

The remaining question is whether the vacation pay he received was meant to be attributed to the week ending January 9, 2010. The employer testified that it was not the intent of the company to have the 2009 vacation pay offset unemployment insurance benefits being paid to company employees in January 2010. Under these circumstances, the administrative law judge concludes that the claimant was not entitled to receive vacation pay attributed to the week in question.

DECISION:

The unemployment insurance decision dated March 23, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits for the week ending January 9, 2010, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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