

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH VERDINEZ
Claimant

APPEAL NO. 10A-UI-06364-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

**Original Claim: 01/11/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Elizabeth Verdinez filed an appeal from an unemployment insurance decision dated February 9, 2010, reference 01, that denied benefits to her 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 May 18, 2010, with Ms. Verdinez participating. Teresa Feldman participated for the employer, IAC Iowa City. Exhibit D-1, the claimant's appeal letter, and Exhibit 1 were admitted into evidence. This matter is considered on a consolidated record with Appeal No. 10A-UI-06365-AT.

ISSUES:

Has the claimant filed a timely appeal?

Is 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: At all material times herein, Elizabeth Verdinez has been an employee of IAC Iowa City. In November or December 2009, the employer announced that it would pay out 2009 unused vacation pay on January 15, 2010. Ms. Verdinez filed an additional claim for unemployment insurance benefits effective December 27, 2009, due to a short-term layoff. The employer notified the Agency of the vacation pay but did not intend that it be attributed to the two weeks ending January 9, 2010. The Agency misunderstood the employer's intent.

On February 9, 2010, a decision was issued denying benefits to Ms. Verdinez for those two weeks. The decision indicated that an appeal must be postmarked or received by the Agency not later than February 19, 2010. Ms. Verdinez contacted the Agency about filing an appeal. She did not do so after being advised by an Agency employee that such an appeal would be futile. She filed an appeal on April 23, 2010, after learning that some coworkers had successfully appealed similar decisions.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. For the reasons that follow, the administrative law judge concludes that it can be.

Although Iowa Code section 96.6-2 gives parties only ten days from the date of a fact-finding decision to file an appeal, 871 IAC 24.35 allows additional time if the delay in filing the appeal is the fault of the Agency or the U.S. Postal Service. The administrative law judge concludes from the claimant's testimony that she would have filed a timely appeal but for inaccurate information from the Agency that such an appeal would be futile. The administrative law judge concludes that the claimant filed her appeal in a reasonable amount of time after learning that similar appeals had been successful.

The remaining question is whether the vacation pay received by Ms. Verdinez should be attributed to the two weeks ending January 9, 2010. It should not.

Ms. Feldman testified credibly and under oath that it was not the intention of the employer to have the vacation pay offset Ms. Verdinez's unemployment insurance benefits. Under these circumstances, the administrative law judge concludes that benefits should not be withheld for the two weeks in question.

DECISION:

The unemployment insurance decision dated February 9, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits for the two weeks ending January 9, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw