

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIEN M LY
Claimant

APPEAL NO. 10A-UI-06030-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 03/29/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Tien M. Ly filed an appeal from an unemployment insurance decision dated March 24, 2010, reference 01, that denied unemployment insurance benefits to her for the two weeks ending January 16, 2010, upon a finding she was entitled to receive vacation pay attributed to those weeks. After due notice was issued, a telephone hearing was held June 10, 2010, with Ms. Ly participating. Teresa Feldmann participated for the employer, IAC Iowa City. Lam Nguyen served as the interpreter. Exhibits One and D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Was the claimant entitled to receive vacation pay attributed to the two weeks ending January 16, 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: Tien M. Ly received unemployment insurance benefits during the two weeks ending January 16, 2010, because she was on temporary layoff. At the same approximate time, she received a payout from the company for unused 2009 vacation hours. The employer reported this to the Agency but did not intend for the 2009 vacation pay to be used as an offset to 2010 unemployment insurance benefits.

The claimant received the adverse fact-finding decisions dated March 24, 2010. She did not realize that she needed to file an appeal with the Agency. She took the matter up with the employer first before filing an appeal. Ms. Ly is not fluent in English.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. The administrative law judge concludes that it can be accepted as timely because of the claimant's limited English

skills. She promptly filed her appeal with the Agency upon learning that that was the proper avenue rather than taking up the matter with the employer.

The employer's witness testified that the company did not intend for the 2009 vacation payout to be used to offset unemployment insurance benefits for the claimant in 2010. Since the company did not intend for the vacation pay to be attributed to the two weeks ending January 16, 2010, the administrative law judge concludes that the claimant is entitled to receive benefits for those weeks.

DECISION:

The unemployment insurance decision dated March 24, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits for the two weeks ending January 16, 2010, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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