

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY K WHITMORE
Claimant

APPEAL NO. 10A-UI-06548-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

OC: 01/03/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Rodney K. Whitmore filed an appeal from an unemployment insurance decision dated February 2, 2010, reference 01, that held him ineligible for unemployment insurance benefits for the week ending January 9, 2010 upon a finding that he was entitled to receive vacation pay for the week in question. After due notice was issued, a telephone hearing was held May 25, 2010 with Mr. Whitmore participating. Teresa Feldmann participated for the employer, IAC Iowa City. Employer Exhibit One and Exhibit D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Did the claimant 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: Rodney K. Whitmore was on a temporary layoff from IAC Iowa City during the week ending January 9, 2010. He received unemployment insurance benefits for the week. In mid-January he received payout from the employer for his unused 2009 vacation hours. The employer reported the vacation payout to the Agency because the Agency had told the employer that it must do so. The employer had not intended that the vacation pay be used to offset unemployment insurance benefits for the claimant and others in his situation.

At the time that the fact-finding decision was issued in February 2010 Mr. Whitmore was alternately staying at a residence in Solon, Iowa and one in Oxford, Iowa. He did not immediately receive the adverse decision. He promptly filed an appeal after he learned of the existence of the decision.

REASONING AND CONCLUSIONS OF LAW:

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

Although Iowa Code section 96.6-2 gives parties only ten days from the date of a fact-finding decision to file an appeal, additional time may be granted if the individual has not received the decision in time to file a timely appeal. See 871 IAC 24.35. The evidence in this record persuades the administrative law judge that Mr. Whitmore filed an appeal promptly after receiving the fact-finding decision. Under these circumstances, the administrative law judge has jurisdiction to rule on the merits of the case.

The remaining question is whether Mr. Whitmore received or was entitled to receive vacation pay attributed to the week ending January 9, 2010. The testimony of the employer's witness establishes that the employer did not intend that the 2009 vacation payout be used to reduce unemployment insurance benefits for individuals such as Mr. Whitmore. Under these circumstances, the vacation pay should not be attributed to the week ending January 9, 2010.

DECISION:

The unemployment insurance decision dated February 2, 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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