

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE L WIDE
Claimant

APPEAL NO. 10A-UI-06552-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

OC: 01/04/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Connie L. Wide filed an appeal from an unemployment insurance decision dated March 25, 2010, reference 01, that held her ineligible for unemployment insurance benefits for the four weeks ending January 2, 2010 upon a finding that she had received vacation pay attributed to those weeks. After due notice was issued, a telephone hearing was held May 24, 2010 with Ms. Wide participating. Teresa Feldmann participated for the employer, IAC Iowa City. Employer Exhibit One and Agency Exhibit D-1 were admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUES:

Has the claimant filed a timely appeal?

Did the claimant receive vacation pay that should be attributed to the four weeks ending January 2, 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: Connie L. Wide received unemployment insurance benefits for the four weeks ending January 2, 2010 while she was on temporary layoff. She received vacation pay in the gross amount of \$2,076.36, her remaining 2009 vacation pay, on December 11, 2009. The employer did not intend that the vacation pay offset unemployment insurance benefits.

Ms. Wide went to the Iowa City office to file an appeal after receiving the decisions of March 25, 2010. She was advised that it would be futile to do so and so did not immediately file her appeals. She filed later after learning that the employer had not intended that the vacation pay offset unemployment insurance benefits. Ms. Wide has repaid the Agency for the unemployment insurance benefits she has received.

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. 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 filing is the fault of the U.S. Postal Service or Iowa Workforce Development. The administrative law judge concludes from the evidence that the claimant would have filed a timely appeal but for incorrect information received from an Agency employee. The administrative law judge concludes that the claimant filed her appeal within a reasonable amount of time after learning that the information had been incorrect. Pursuant to 871 IAC 24.35, the appeal is accepted as timely.

The remaining question is whether the claimant's vacation pay should be attributed to the four weeks ending January 2, 2010. The employer witness testified that it was not the employer's intent that the vacation pay offset any of the claimant's unemployment insurance benefits. From this the administrative law judge concludes that the claimant is entitled to receive benefits for the weeks in question.

DECISION:

The unemployment insurance decision dated March 25, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits for the four weeks ending January 2, 2010, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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