

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARINA M PERDOMO
Claimant

APPEAL NO. 10A-UI-06924-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 01/11/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Karina M. Perdomo filed an appeal from an unemployment insurance decision dated March 25, 2010, reference 01, that ruled she was ineligible for unemployment insurance benefits for the week ending January 9, 2010 upon a finding that she was entitled to receive vacation pay for that week. After due notice was issued, a telephone hearing was held May 26, 2010 with Ms. Perdomo participating. Teresa Feldmann participated for the employer, IAC Iowa City. Patricia Ver Ploeg served as interpreter. Employer Exhibit One and Exhibit D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Is the claimant eligible to receive unemployment insurance benefits 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: Karina M. Perdomo was on a temporary layoff during the week ending January 9, 2010. She received unemployment insurance benefits for that week. In mid January she received a payout for her unused vacation hours from 2009. IAC Iowa City reported that information to the agency, believing that it was required to do so. The employer did not intend for the vacation payout to be used to offset unemployment insurance benefits for Ms. Perdomo and other employees in the same situation.

When Ms. Perdomo received the fact-finding decision, she went to her local workforce development center. There she received incorrect information about her appeal rights and the chances that the decision would be reversed. Therefore, she did not immediately file an appeal. She filed the appeal later after learning that it was possible to do so. English is not the claimant's native language.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. 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, additional time may be granted if the delay is the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. The administrative law judge notes that English is not the claimant's native language. He concludes from the evidence in the record that the information given to Ms. Perdomo initially was confusing at best. Under the circumstances, the administrative law judge concludes that the claimant's later appeal should be accepted as timely.

Iowa Code section 96.5-7 may be used by an employer to delay the commencement of unemployment insurance benefits when an individual receives vacation pay in connection with a separation from employment. The evidence here persuades the administrative law judge that the employer did not intend that the 2009 vacation payout be used in such a manner. Under the circumstances, the claimant is entitled to receive unemployment insurance benefits for the week ending January 9, 2010.

DECISION:

The unemployment insurance decision dated March 25, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs