

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

XUONG T LY
Claimant

APPEAL NO. 10A-UI-07078-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 12/20/09
Claimant: Appellant (2)**

Section 96.3-7 – Recovery of Overpayments
Section 96-5-7 – Vacation Pay
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Xuong T. Ly filed an appeal from an unemployment insurance decision dated February 2, 2010, reference 01, that ruled he had been overpaid unemployment insurance benefits in the amount of \$87.00 for the week ending January 9, 2010, upon a finding that he had incorrectly reported vacation pay from IAC Iowa City. After due notice was issued, a telephone hearing was held May 26, 2010, with Mr. Ly participating. Teresa Feldmann participated for the employer. Employer Exhibit 1 and Agency Exhibit D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Has the claimant been overpaid for incorrectly reporting vacation pay?

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: Xuong T. Ly was on temporary layoff during the week ending January 9, 2010. He received unemployment insurance benefits for that week. In mid-January, he received a 2009 vacation payout for unused hours from that year. The employer reported the vacation pay to the Agency, understanding that it was required to do so. The employer did not intend for the vacation pay to offset unemployment insurance benefits.

English is not Mr. Ly's native language. When he received the February 2, 2010 decision, he did not understand that he had the option to file an appeal. He merely repaid the money in question. He filed an appeal later after learning that he had the right to do so.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He concludes that he does.

The evidence in this record establishes that the claimant is not fluent in English. The evidence persuades the administrative law judge that Mr. Ly promptly filed his appeal once he learned that he had the option to do so. Under these circumstances, the administrative law judge accepts the appeal as timely.

The remaining question is whether Mr. Ly has been overpaid unemployment insurance benefits for incorrectly reporting vacation pay from IAC Iowa City. The evidence in this record persuades the administrative law judge that the employer did not intend that the 2009 vacation payout be used as an offset against unemployment insurance benefits for Mr. Ly and other employees in similar situations. Since the employer did not desire that it be attributed to the week in question, it should not be used to reduce unemployment insurance benefits. Mr. Ly was entitled to his full weekly benefit amount. Since he has repaid the amount in question, the Agency must now reimburse him.

DECISION:

The unemployment insurance decision dated February 2, 2010, reference 01, is reversed. The claimant was not overpaid unemployment insurance benefits for the week ending January 9, 2010. The Agency shall refund \$87.00 to him.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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