

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRET J PENNEY**  
Claimant

**APPEAL NO. 10A-UI-06554-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY**  
Employer

**OC: 01/03/10**  
**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:**

Bret J. Penney 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 \$65.00 for the week ending January 9, 2010 upon a finding that he had incorrectly reported vacation pay from IAC Iowa City for that week. After due notice was issued, a telephone hearing was held May 25, 2010 with Mr. Penney participating. Teresa Feldmann participated for the employer. Exhibit D-1 was admitted into evidence.

**ISSUES:**

Has the claimant filed a timely appeal?

Has the claimant been overpaid because of 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: Bret J. Penney was on temporary layoff during the week ending January 9, 2010. He received unemployment insurance benefits for that week. On or about January 15, 2010 Mr. Penney received vacation pay in the gross amount of \$64.76 from IAC Iowa City. This was for unused vacation hours from 2009. The company did not intend for the vacation pay to offset unemployment insurance benefits.

When Mr. Penney went to his local office to file an appeal in February, he was discouraged from doing so. He was told that an appeal would most likely be futile. He filed later after learning that some appeals had been successful.

**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 a party only ten days from the date of a fact-finding decision to file an appeal, additional time may be granted if the delay in appealing is the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. The administrative law judge concludes that the claimant would have filed a timely appeal but for actions by the Agency discouraging him from filing the appeal. Under these circumstances, the appeal is accepted as timely.

The remaining question is whether Mr. Penney has been overpaid because he incorrectly reported vacation pay from the employer. The employer's witness testified that the company did not intend the vacation pay to be used as an offset against unemployment insurance benefits. Under these circumstances, it was not an error for Mr. Penney to fail to report the vacation pay. He was entitled to receive his full weekly benefit amount. Since he has subsequently repaid the \$65.00, the Agency now must reimburse him.

**DECISION:**

The unemployment insurance decision dated February 2, 2010, reference 01, is reversed. The claimant has not been overpaid \$65.00 for the week ending January 9, 2010. The Agency shall reimburse the claimant for the money that he has repaid.

---

Dan Anderson  
Administrative Law Judge

---

Decision Dated and Mailed

css/css