

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISABEL GAMEZ DE MOLINA
Claimant

APPEAL NO. 09A-UI-08128-SWT

**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 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 4, 2009, reference 04, that concluded she was ineligible for benefits for the week ending January 17, 2009, due to the receipt of vacation pay. A telephone hearing was held on June 23, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Mario Molina. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?
Did the claimant receive deductible vacation pay?

FINDINGS OF FACT:

The claimant worked for the employer from July 1999 through December 19, 2008. She filed a claim for unemployment insurance benefits with an effective date of January 11, 2009. The claimant did not receive any vacation pay for the week ending January 17, 2009. She received \$254.00 in benefits for that week.

The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer mistakenly reported the claimant had received vacation pay of \$584.80 for the week of January 17 when it actually was for the next week. The claimant had properly reported that payment.

The claimant never received the unemployment insurance decision mailed on May 4, 2009, that denied her benefits for the week ending January 17. She appealed on May 26, 2009, after she found out that the Agency had deducted the \$254.00 in benefits from the benefits due her.

REASONING AND CONCLUSIONS OF LAW:

Although the law requires that decision be appealed within ten days after a decision is mailed to the party's last known address (Iowa Code section 96.6-2), the failure to receive the decision

excuses the late filing of an appeal. 871 IAC 24.35(2). The appeal in the this case is deemed timely.

Vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. Iowa Code section 96.5-7.

In this case, the claimant never received vacation pay for the week ending January 17, but the employer mistakenly attributed it to that week. The claimant is, therefore, eligible for unemployment insurance benefits for the week ending January 17, 2009.

DECISION:

The unemployment insurance decision dated May 4, 2009, reference 04, is reversed. The claimant is eligible to receive unemployment insurance benefits for the week ending January 17, 2009.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs