

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J VALENTO
Claimant

APPEAL NO. 10A-UI-15573-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 10/03/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Michael J. Valento filed an appeal from an unemployment insurance decision dated October 29, 2010, reference 01, that disqualified him for benefits. Due notice was issued for a hearing to be held in Des Moines, Iowa on January 3, 2011. Neither Mr. Valento nor his former employer, Wells Fargo Bank, responded when paged at the time of the hearing and again ten minutes later. This decision is based on information in the claimant's appeal letter, identified for the record as Exhibit D-1.

ISSUE:

Has the claimant filed a timely appeal?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: The decision from which Michael J. Valento has appealed states that it would become final unless an appeal was postmarked by November 8, 2010 or received by the agency by that date. Mr. Valento filed his appeal in person at the agency's administrative office on November 10, 2010. The appeal letter does not explain the delay in filing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not.

Iowa Code § 96.6-2 gives individuals ten days to file an appeal from a fact-finding decision. The Supreme Court of Iowa has ruled that the time limit in the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the administrative law judge has no authority to change a fact-finding decision, even if he disagrees with it.

The evidence in this record establishes that the appeal was filed two days after the expiration of the appeal period. There is no evidence of any potentially justifying reason for the late appeal. See 871 IAC 24.35. The administrative law judge concludes he lacks jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated October 29, 2010, reference 01, has become final and remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs