

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMMY T TRUONG
Claimant

APPEAL NO. 10A-UI-06613-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 12/06/09
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayments
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Tommy T. Truong filed an appeal from an unemployment insurance decision dated March 16, 2010, reference 04, that ruled he had been overpaid unemployment insurance benefits in the amount of \$399.00 for the week ending January 9, 2010. Due notice was issued for a telephone hearing to be held May 26, 2010. Although Mr. Truong provided a telephone number at which he could be contacted, a call to that number at the time of the hearing was answered by a recording stating that he was not available.

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 the claimant has appealed states that it would become final unless an appeal was postmarked by March 26, 2010, or received by the Agency by that date. The appeal was filed on May 3, 2010. The document contains no information indicating a legally sufficient reason for the delay.

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.

The Supreme Court of Iowa has ruled that the ten-day time limit for filing appeals from fact-finding decisions, contained in Iowa Code section 96.6-2, 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 appeal in this case was filed several weeks after March 26, 2010. Since there is no information indicating a possible justification for the late filing, the administrative law judge concludes he lacks jurisdiction to rule on the merits of this case.

DECISION:

The unemployment insurance decision dated March 16, 2010, reference 04, is affirmed. The claimant was overpaid \$399.00 in unemployment insurance benefits for the week ending January 9, 2010. The overpayment has been recovered.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw