

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIK A SOLIS
Claimant

APPEAL NO. 09A-UI-04931-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/23/08
Claimant: Appellant (1)

Section 96.4-3 – Eligibility for Benefits
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Erik A. Solis filed an appeal from a unemployment insurance decision dated March 3, 2009, reference 01, that denied unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held April 22, 2009 with Mr. Solis participating. Rod Unruh participated for the employer, Hy-Vee, Inc. Exhibit D-1 was admitted into evidence.

ISSUE:

Has the claimant filed a timely appeal?

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: The decision from which Erik A. Solis has appealed states that it would become final unless an appeal was postmarked by March 13, 2009. Mr. Solis filed his appeal by mail, the envelope receiving a postmark of March 25, 2009. He did not file the appeal earlier because he had been out of town.

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 section 96.6-2 gives parties ten days from the date of a fact-finding decision to file an appeal. 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 jurisdiction to rule on the merits of the case. Additional time for the appeal may be granted if the delay was the fault of the United States Postal Service or the Agency. See 871 IAC 24.35. The evidence in this record establishes that the filing of the appeal was delayed because Mr. Solis was out of

town. This does not fall within the allowable reasons for accepting a late appeal. The administrative law judge concludes that he has no jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated March 3, 2009, reference 01, has become final and remains in effect. The claimant is ineligible for unemployment insurance benefits.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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