

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL P MOORE
Claimant

APPEAL NO. 09A-UI-00399-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/24/08 R: 02
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Gabriel P. Moore filed an appeal from an unemployment insurance decision dated March 17, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 23, 2009 with Jon R. Pritchard, Attorney at Law, appearing on behalf of Mr. Moore, who was not available. The employer, Tyson Fresh Meats, Inc., provided the name and phone number of one witness, Eloisa Baumgartner. When called at the time of the hearing, however, the number was answered by a recording stating that the number had been disconnected or was no longer in service.

ISSUE:

Does the administrative law judge have jurisdiction to rule on the merits of this case?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: The decision from which Gabriel P. Moore has appealed states that it would become final unless an appeal was postmarked by March 27, 2008 or received by the Agency by that date. The claimant filed his appeal by mail. The postmark is illegible, but the letter is dated January 9, 2009. It was received by the Agency on January 12, 2009. Mr. Moore did not appeal the decision in March because he had obtained other employment.

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 10 days from the date of the fact-finding decision to file an appeal. The Supreme Court of Iowa has ruled that this time limit 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 change a fact-finding decision, even if he should disagree with it.

The record before the administrative law judge establishes that Mr. Moore failed to file his appeal within the statutory time limit because of other employment. The administrative law judge concludes that the delay was not the fault of either the U.S. Postal Service or of the Agency. He thus concludes that the appeal is untimely.

DECISION:

The unemployment insurance decision dated March 17, 2008, 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