

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M HURLBUT
Claimant

APPEAL NO. 10A-EUCU-00409-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 11/23/08
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from an unemployment insurance decision dated March 23, 2010, reference 03, that ruled the claimant had been overpaid unemployment insurance benefits in the amount of \$131.00 for the week ending January 9, 2010, for incorrectly reporting vacation pay. After due notice was issued, a telephone hearing was held May 19, 2010, with the claimant participating. Teresa Feldman participated for the employer IAC Iowa City. Employer Exhibit One and Exhibit D-1 were 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 the claimant has appealed states that it would become final unless an appeal was postmarked by April 2, 2010, or received by the Agency by that date. The appeal was filed on May 5, 2010. The claimant had received the decision in time to file a timely appeal.

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 authority to change an earlier decision, even if he disagrees with it.

The evidence in this record persuades the administrative law judge that the appeal in this case is not timely. The earlier decision has become final.

DECISION:

The unemployment insurance decision dated March 23, 2010, reference 03, has become final. The claimant has been overpaid \$131.00 for the week ending January 9, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw