

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKY J CLARK**  
Claimant

**APPEAL NO. 10A-UI-02038-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Original Claim: 11/02/08  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Ricky J. Clark filed an appeal from an unemployment insurance decision dated January 26, 2010, reference 07, that ruled he had been overpaid unemployment insurance benefits in the amount of \$5,958.66 for 37 weeks between May 3, 2009, and January 16, 2010. After due notice was issued, a telephone hearing was held March 29, 2010, with Mr. Clark participating. Exhibit D-1 was admitted into evidence.

**ISSUE:**

Has the claimant filed a timely appeal.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Ricky J. Clark has appealed states that it would become final unless an appeal was postmarked by February 5, 2010, or received by the Agency by that date. The appeal was filed by mail, the envelope receiving a postmark on February 8, 2010. Mr. Clark had intended to file his appeal on February 5, 2010. He did not do so, because he was involved in an automobile accident on that day.

**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 an individual 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 re-examine the merits of a case. Additional time may be granted for an appeal, but only if the delay is the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. From the evidence in this record, the administrative law judge concludes that the appeal

was not timely and that the delay was not the fault of the Agency or the U.S. Postal Service. Therefore, the administrative law judge has no jurisdiction to rule on the merits of this case.

**DECISION:**

The unemployment insurance decision dated January 26, 2010, reference 07, has become final and remains in effect. The claimant has been overpaid \$5,958.66 in unemployment insurance benefits for 37 weeks between May 3, 2009, and January 16, 2010.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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