

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMMY T TRUONG
Claimant

APPEAL NO. 10A-UI-06612-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

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

Section 96.5-7 – Vacation Pay
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 03, that denied benefits to him for the two weeks ending January 16, 2010, upon a finding that he was entitled to receive vacation pay for the two weeks in question. 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. After waiting 20 minutes, the administrative law judge closed the record.

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 claimant filed his appeal on May 3, 2010. The appeal letter contains no information justifying the delay in filing.

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, in the case of Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979), ruled that the ten-day time limit for filing appeals contained in Iowa Code section 96.6-2 is jurisdictional. This means that in the absence of a timely appeal, the administrative law judge has no jurisdiction to rule on the merits of a case. On its face, the claimant's appeal is not timely. With no information indicating mitigating circumstances, the administrative law judge concludes that he lacks jurisdiction to rule on the merits of this case.

DECISION:

The unemployment insurance decision dated March 16, 2010, reference 03, remains in effect. The claimant is ineligible for unemployment insurance benefits for the two weeks ending January 16, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw