

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KYLE W BAKER
2703 BIG WOODS RD
CEDAR FALLS IA 50613**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 04A-UI-03573-AT
OC: 01-11-04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Kyle W. Baker filed a timely appeal from an unemployment insurance decision dated March 15, 2004, reference 01, which ruled that he had been paid overpaid \$2,400.00 for the eight weeks ending March 6, 2004 upon a finding that he had been paid under an incorrect social security number in error. After due notice was issued, a telephone hearing was held April 19, 2004 with Mr. Baker participating. Exhibit D-1 was admitted into evidence.

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 Kyle W. Baker has

appealed states that it would become final unless an appeal was postmarked by March 25, 2004 or received by the Agency by that date. Mr. Baker received the decision but lost it. He filed an appeal by mail, the envelope receiving a postmark of March 29, 2004.

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 but if no appeal is filed within that time benefits shall be paid or denied in accordance with the decision. The Supreme Court of Iowa has ruled that the 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 authority to change a fact-finding decision, even if he disagrees with it. The evidence in this record establishes that Mr. Baker received the adverse decision in time to file an appeal on or before March 25, 2004. Since he did not do so, the administrative law judge lacks jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated March 15, 2004, reference 01, has become final. The claimant was overpaid \$2,400.00 for the eight weeks ending March 6, 2004.

tjc/b