

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH J FICEK
Claimant

APPEAL NO. 10A-UI-14994-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 01/18/09
Claimant: Appellant (1)

Section 96.5-5-c – Pension Deduction
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Deborah J. Ficek filed an appeal from an unemployment insurance decision dated November 4, 2009, reference 02, that denied unemployment insurance benefits to her effective July 12, 2009 upon a finding that she was entitled to receive a pension from a base period employer in an amount greater than her weekly benefit amount. After due notice was issued, a telephone hearing was held December 15, 2010 with Ms. Ficek participating. The employer, Qwest Corporation, did not respond to the notice. Exhibit D-1 was admitted into evidence.

ISSUE:

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

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 Deborah Ficek has appealed states that it would become final unless an appeal was postmarked by November 14, 2009 or received by the agency by that date. Ms. Ficek filed her appeal by mail, the envelope receiving a postmark on October 29, 2010. Ms. Ficek had received the decision in November 2009.

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 a party 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 fact-finding decision, even if he disagrees with it.

The evidence before the administrative law judge persuades him that Ms. Ficek received the adverse decision in time to file an appeal by November 4, 2009 but did not do so until she received a later decision instructing her to repay the benefits she had already received. Under these circumstances, the administrative law judge concludes that he has no jurisdiction to review the merits of the case.

DECISION:

The unemployment insurance decision dated November 4, 2009, reference 02, has become final. The claimant is ineligible for unemployment insurance benefits effective July 12, 2009.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs