

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL A WILKEN
Claimant

APPEAL NO. 11A-UI-04745-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/29/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Carol A. Wilken filed an appeal from an unemployment insurance decision dated November 2, 2010, reference 05, that ruled she had been overpaid \$844.00 in benefits for the five weeks ending September 25, 2010 because of a decision dated October 5, 2010 that denied benefits to her upon a finding that she was not eligible to receive unemployment insurance benefits. Due notice was issued for a telephone hearing to be held April 25, 2011. Ms. Wilken did not provide a telephone number at which she could be contacted. This decision is based on information in the claimant's appeal letter.

ISSUE:

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

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 November 12, 2010 or received by the agency by that date. The claimant filed her appeal via the U.S. Postal Service, the appeal receiving a postmark of April 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 gives individuals ten days from the date of a fact-finding decision to file an appeal. The Iowa Supreme Court 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 jurisdiction to change a fact-finding decision, even if he should disagree with it. The evidence in this record establishes that the claimant filed her appeal several months after the end of the appeal period. Thus, the administrative law judge has no jurisdiction to consider the merits of the case.

DECISION:

The unemployment insurance decision dated November 2, 2010, reference 05, has become final and remains in effect. The claimant has been overpaid \$844.00 for the five weeks ending September 25, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs