

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEVIN M PICKERING
Claimant

APPEAL NO. 13A-UI-01060-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/15/12
Claimant: Appellant (1)**

Section 96.3-7 - Overpayment of Benefits
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 19, 2012, reference 03, that concluded he was overpaid \$944.00. A telephone hearing was scheduled on February 28, 2013. The claimant was properly notified about the hearing. The claimant failed to participate in the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last known address of record on October 19, 2012. The decision concluded he was overpaid \$944.00 in benefits and stated it was final unless a written appeal was postmarked or received by the Appeals Section by October 29, 2012.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on January 29, 2013, which is after the time period for appealing had expired. The reason the claimant delayed in filing his appeal is unknown.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa

1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decision dated October 19, 2012, reference 03, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision concluding he was overpaid \$944.00 remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css