

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HILLARY L POLON**  
Claimant

**APPEAL NO. 11A-UI-05624-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/06/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Hillary L. Polon filed an appeal from an unemployment insurance decision dated March 28, 2011, reference 01, that disqualified him for benefits. Mr. Polon requested an in-person hearing. Due notice was issued for a hearing to be held in Des Moines, Iowa, at 3:00 p.m. on May 25, 2011. The employer's witnesses and representative appeared at the appointed time. Mr. Polon did not. The administrative law judge received word that Mr. Polon had called the Appeals Bureau at 3:04 p.m. indicating that he was on his way. As of 3:30, he had not arrived. The administrative law judge released the employer's participants. Mr. Polon arrived at 3:40 p.m., indicating that he had not had a ride. The administrative law judge declined to re-open the record. 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:**

The decision from which Hillary L. Polon has appealed states that it would become final unless an appeal was postmarked by April 7, 2011, or received by the Agency by that date. Mr. Polon filed his appeal in person on April 20, 2011. Notes by Agency personnel on the appeal letter indicated that Mr. Polon knows little English. When a staff member from the Appeals Bureau called Mr. Polon to ask if he needed an interpreter for the hearing, Mr. Polon indicated that he did not. Mr. Polon had no difficulty understanding the administrative law judge when the two spoke on the afternoon of May 25, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the administrative law judge has jurisdiction to rule on the merits of the case. He does not.

Iowa Code section 96.6-2 gives parties 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. In the absence of a timely appeal, the administrative law judge cannot change a fact-finding decision.

The evidence establishes that the appeal was filed 13 days after the end of the appeal period. The evidence shows that the claimant was able to read the hearing notice and contacted the Appeals Bureau concerning the hearing. Nevertheless, the claimant reported for the hearing 40 minutes late. The administrative law judge concludes that the delay in filing the appeal was not for lack of English skills. Since the appeal was untimely, the earlier decision has become final and remains in effect.

**DECISION:**

The unemployment insurance decision dated March 28, 2011, reference 01, has become final and remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw