

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY T STEWART
Claimant

APPEAL NO. 10A-UI-01203-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/29/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Bradley T. Stewart filed an appeal from an unemployment insurance decision dated December 21, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 3, 2010 with Mr. Stewart participating. Josh McGraw participated for the employer, Wal-Mart Stores, Inc. Exhibit D-1, the claimant's appeal letter and envelope, were admitted into the record.

ISSUE:

Has the claimant filed a timely appeal?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Bradley T. Stewart has appealed states that it would become final unless an appeal was postmarked by December 31, 2009 or received by the agency by that date. Mr. Stewart received the decision. He wrote out an appeal letter on January 19, 2010 and mailed it to the agency. The envelope received a postmark of January 20, 2010.

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 parties ten days from the date of a fact-finding decision to file an appeal. The statute goes on to say that in the absence of a timely appeal, benefits shall be paid or denied in accordance with that 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.

The evidence in the record persuades the administrative law judge that the claimant could have but did not file an appeal within the time limits set by statute. Since he failed to meet the statutory deadline, the administrative law judge concludes that the fact-finding decision has become final.

DECISION:

The unemployment insurance decision dated December 21, 2009, 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 amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs