

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HONG T NGUYEN**  
Claimant

**APPEAL NO. 11A-UI-07003-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOLY SPIRIT RETIREMENT HOME**  
Employer

**OC: 04/17/11  
Claimant: Appellant (1)**

Section 96.4-3 – Eligibility For Benefits  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Hong T. Nguyen filed an appeal from an unemployment insurance decision dated May 12, 2011, reference 01, that held her ineligible to receive unemployment insurance benefits effective April 17, 2011 upon a finding that she was still employed for the same hours and wages as in her original contract of hire. Due notice was issued for a telephone hearing to be held June 21, 2011. Although Ms. Nguyen provided a telephone number at which she could be contacted, she was not available when called at the time of the hearing. By the time the claimant called the Appeals Bureau at 11:11 a.m. the record had been closed. This decision is based on information in the claimant's appeal letter and in agency benefit payment records.

**ISSUE:**

Has the claimant filed a timely appeal?

**FINDINGS OF FACT:**

The decision from which Hong T. Nguyen has appealed states that it would become final unless an appeal was postmarked by May 22, 2011 or received by the agency by that date. The claimant filed her appeal on May 26, 2011 in an agency office. The appeal raised the issue of the claimant's subsequent separation from employment. The unemployment insurance consequences of that decision will be determined in a fact-finding interview scheduled for June 29, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the administrative law judge has jurisdiction to rule on the availability issue discussed in the fact-finding decision of May 12, 2011. He does not. Iowa Code § 96.6-2 gives individuals 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 rule on the merits of a case.

There is no evidence in the record to establish a justifiable reason for the delay in filing the appeal. Furthermore, it appears that the appeal letter was the claimant's method of notifying the agency that a separation issue must be adjudicated. Since the fact-finding interview on that issue is scheduled for June 29, 2011, it would be inappropriate for the administrative law judge to consider the issue at this time.

**DECISION:**

The unemployment insurance decision dated May 12, 2011, reference 01, has become final and remains in effect. The claimant is ineligible for unemployment insurance benefits effective April 17, 2011.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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