

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTOPHER D SMITH
Claimant

APPEAL NO. 12A-UI-06615-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Public Law 110-252 – Emergency Unemployment Compensation
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Kristopher D. Smith filed an appeal from an unemployment insurance decision dated May 16, 2012, reference 05, that ruled he was ineligible for emergency unemployment compensation benefits through Iowa effective February 12, 2012 because he was monetarily eligible for state unemployment insurance benefits as of that date. After due notice was issued, a telephone hearing was held June 27, 2012 with Mr. Smith participating. Exhibit D-1 was admitted into evidence. This matter is considered on a consolidated record with 12A-UI-06616-AT.

ISSUE:

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

FINDINGS OF FACT:

The decision from which Kristopher D. Smith has appealed states that it would become final unless an appeal was postmarked by May 26, 2012 or received by the agency by that date. May 26, 2012 was the Saturday before Memorial Day. Mr. Smith received the decision on May 30, 2012 but did not file an appeal until June 6, 2012.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 gives an individual 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. In the absence of a timely appeal, the administrative law judge cannot change a fact-finding decision, even if he disagrees with it.

The evidence in the record establishes that the agency mailed the decision in question to the address provided to it by Mr. Smith. That address was the address of his mother. Mr. Smith did not actually see the decision until May 30, 2012 but then waited a week to file his appeal. The administrative law judge concludes that under these circumstances the appeal cannot be accepted as timely.

DECISION:

The unemployment insurance decision dated May 16, 2012, reference 05, has become final. The claimant is ineligible for emergency unemployment compensation benefits through Iowa effective February 12, 2012.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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