

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTOPHER D SMITH**  
Claimant

**APPEAL NO. 12A-UI-06616-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

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

Section 96.3-7 – Recovery of Overpayments  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Kristopher D. Smith filed an appeal from an unemployment insurance decision dated May 21, 2012, reference 06, that ruled he had been overpaid emergency unemployment compensation benefits totaling \$4,015.00 for the 11 weeks ending April 28, 2012. After due notice was issued, a telephone hearing was held June 27, 2012 on a consolidated record with 12A-UI-06615-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 31, 2012 or received by the agency by that date. The decision was mailed to the address provided by Mr. Smith, his mother's address. Mr. Smith had not notified the agency that he had moved to Omaha, Nebraska. He first saw the decision on May 30, 2012 and waited until June 6, 2012 to file his appeal.

**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. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, an administrative law judge cannot change a fact-finding decision, even if he or she disagrees with it.

The evidence in this record establishes that the decision was mailed to the address provided by Mr. Smith, that he had actual knowledge of the decision within the time limit allowed by law for appeal but that he did not file the appeal until June 6, 2012. The appeal is not timely. The administrative law judge has no jurisdiction to rule on the merits of the case.

**DECISION:**

The unemployment insurance decision dated May 21, 2012, reference 06, is affirmed.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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