

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLOTTE A HAGANS
Claimant

APPEAL NO. 10A-UI-06355-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY
Employer

**Original Claim: 01/03/10
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayments
Section 96.5-7 – Vacation Pay
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Charlotte A. Hagans filed an appeal from an unemployment insurance decision dated February 9, 2010, reference 01, that ruled she had been overpaid \$225.00 for the week ending January 9, 2010, upon a finding she had incorrectly reported vacation pay from IAC Iowa City. After due notice was issued, a telephone hearing was held May 18, 2010, with Ms. Hagans participating. Assistant Human Resources Manager Teresa Feldman participated for the employer. Exhibit D-1 was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records and overpayment records.

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 the claimant has appealed states that it would become final unless an appeal was postmarked by February 19, 2010, or received by the Agency by that date. The claimant received the decision on or about February 10, 2010. She was working lots of overtime and forgot about the matter until hearing word in the plant that similar cases involving other employees had been reversed. She then filed an appeal on April 26, 2010. No one had advised her not to file an appeal earlier.

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 Supreme Court of Iowa has ruled that this 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 change an earlier decision, even if he disagrees with it.

The evidence in this record establishes that Ms. Hagans received the adverse decision within the time limits set for an appeal but that she did not file an appeal for over two months. Finding no evidence that the delay was the fault of the U.S. Postal Service or Iowa Workforce Development, the administrative law judge concludes that he has no jurisdiction to rule on the merits of this case. He notes, however, that Ms. Hagans owes nothing to the Agency at this time, having already repaid the money in question.

DECISION:

The unemployment insurance decision dated February 9, 2010, reference 01, remains in effect. The claimant was overpaid unemployment insurance benefits in the amount of \$225.00 for the week ending January 9, 2010. The overpayment has been recovered.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw