

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUFINO R VASQUEZ**  
Claimant

**APPEAL NO. 11A-UI-00424-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN MORRELL & CO**  
Employer

**OC: 12/19/10  
Claimant: Appellant (1)**

Section 10A-601 – Employment Appeal Board Review and Finality  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Rufino R. Vasquez filed an appeal from a representative's decision dated 1991, reference number unknown, which denied him unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on April 4, 2011. Claimant participated. Although notified, the employer did not participate.

**ISSUE:**

At issue in this matter is whether the appeal filed herein was timely.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: That a disqualification decision was mailed to the claimant's address of record in 1991. Subsequently an appeal was filed with the Employment Appeal Board and a decision was issued affirming the claimant's disqualification from benefits. When the claimant received the decision it contained a warning that a further appeal must be taken to the District Court. An appeal was not filed with the District Court by Mr. Vasquez.

**REASONING AND CONCLUSIONS OF LAW:**

The calendar days for appeal begin running on the mailing date. Unless otherwise corrected, the decision date is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that the claimant did not further appeal an Employment Appeal Board decision disqualifying him from benefits and establishing an overpayment. The decision of the Board of Appeals therefore became final by operation of law. The Supreme Court of Iowa has declared there is a mandatory duty to file appeals from decisions within the time allotted by

statute and that there is no authority to change a decision if a timely appeal is not filed. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice is invalid. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373, 377 (Iowa 1979).

The administrative law judge concludes that the failure of the claimant to further appeal the Appeal Board's decision disqualifying him from benefits and establishing an overpayment has caused that decision to become final by operation of law. The claimant's failure to file a timely appeal was not due to any Agency or action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge concludes that the appeal was not timely and that the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The representative's decision dated 1991, reference number unknown, is hereby affirmed. The appeal in this case was not filed beyond the decision of the Employment Appeal Board disqualifying the claimant and establishing overpayment. The decision of the Appeal Board has become final by operation of law and remains in effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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