

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA L THOMAS**  
Claimant

**APPEAL NO. 09A-UI-07050-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K MART CORP**  
Employer

**OC: 03/08/09**  
**Claimant: Appellant (1)**

Section 96.5-2-b & c – Gross Misconduct  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Tina L. Thomas filed an appeal from an unemployment insurance decision dated April 6, 2009, reference 01, that disqualified her for benefits and deleted all wage credits from all employers. Due notice was issued for a telephone hearing to be held May 26, 2009. Ms. Thomas did not provide a telephone number at which she could be contacted. Under these circumstances, it was unnecessary to take testimony from the employer, K Mart Corporation.

**ISSUE:**

Has the claimant filed a timely appeal?

**FINDINGS OF FACT:**

Having examined all matters of record, the administrative law judge finds: The decision from which Tina L. Thomas has appealed states that it would become final unless an appeal was postmarked by May 1, 2009 or received by the Agency by that date. The claimant filed her appeal on May 8, 2009 at her local workforce development center. The appeal letter indicated that she had received the adverse decision on April 28, 2009.

**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 the time limit in question 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 jurisdiction to rule on the merits of a case.

The evidence in this record establishes that Ms. Thomas received the adverse decision three days before the due date. She failed to file a timely appeal. Nothing in the record indicates that

the delay was the fault of the U.S. Postal Service or Iowa Workforce Development. The administrative law judge concludes he has no jurisdiction to consider the merits of this case.

**DECISION:**

The unemployment insurance decision dated April 6, 2009, reference 01, has become final and remains in effect. The claimant has been disqualified for gross misconduct. All prior wage credits are canceled.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs