

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADONIS FLEMISTER**  
Claimant

**APPEAL NO. 10A-UI-00746-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Original Claim: 04/19/09  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 15, 2009, reference 04, that held the department was withholding benefits on his claim to satisfy a South Dakota \$5,176.00 overpayment. A telephone hearing was scheduled for February 25, 2010. The claimant participated.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: The South Dakota Department of Labor mailed the claimant the overpayment decision to his address of record on June 17, 2002. The warning date to appeal is July 2. The claimant did not appeal this decision, and it has now become final. South Dakota notified Iowa of the \$5,376.00 overpayment, and it requested Iowa to collect the overpayment under a reciprocal agreement between states. Iowa collected \$200.00 by garnishment that reduced the overpayment by the time of the Iowa decision from \$5,376.00 to \$5,176.00.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under

that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the claimant failed to file a timely appeal from the South Dakota overpayment decision dated June 17, 2002, and the administrative law judge lacks jurisdiction to rule on the issue, which has now become final.

If the claimant disagreed with the South Dakota overpayment, he needed to file a timely appeal from the decision. Iowa does not have jurisdiction to consider an untimely appeal of a determination made by another State. Iowa is given the authority to collect the overpayment from the claimant's Iowa claim.

**DECISION:**

The department decision dated December 15, 2009, reference 04, is affirmed. Iowa has the authority to collect the claimant's South Dakota overpayment.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw