

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA E PENA
Claimant

APPEAL NO. 10A-EUCU-00357-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 11/30/08
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Sandra E. Pena filed an appeal from an unemployment insurance decision dated March 16, 2010, reference 01, that ruled she was ineligible for unemployment insurance benefits for the week ending January 9, 2010 because she was entitled to receive vacation pay attributed to that week. After due notice was issued, a telephone hearing was held May 17, 2010 with Ms. Pena participating. Teresa Feldmann participated for the employer, IAC Iowa City, LLC. Celia Huante served as the interpreter. Exhibit D-1, the claimant's appeal letter, was admitted into evidence.

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 March 26, 2010 or received by the Agency by that date. The appeal was filed on April 27, 2010. Before the appeal date has passed, the claimant repaid the benefits in question. The claimant had asked someone to read the decision for her.

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 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 a fact-finding decision, even if he disagrees with it.

The evidence in this record establishes that the claimant received the adverse decision and repaid the overpayment within the time limit for filing an appeal. The claimant, a Spanish speaker, testified that she had had someone read the decision for her. From this the administrative law judge concludes that the claimant could have but did not chose to file an appeal until sometime later. The administrative law judge concludes that the appeal is untimely and that the fact-finding decision has become final.

DECISION:

The unemployment insurance decision dated March 16, 2010, reference 01, has become final. The claimant is not entitled to receive unemployment insurance benefits for the week ending January 9, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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