

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AQIL H ALKHALEIFI
Claimant

APPEAL NO: 12A-UI-07921-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY
Employer

OC: 05/20/12
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 19, 2012 determination (reference 01) that denied him benefits as of May 20, 2012, because he was unable to work as the result of an injury. The claimant participated at the hearing. Ann Holoch appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive benefits as of May 20, 2012.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Was the claimant able to and available for work as of May 20, 2012?

FINDINGS OF FACT:

The claimant was injured and did not work from early December 2011 through May 9, 2012. On May 9, the claimant was released to work and went back to work for the employer. He worked May 9 through 20. The employer shut down work the week of May 20 and advised employees to either take vacation or apply for unemployment insurance benefits. The claimant did not have any vacation time to use and established a claim for benefits during the week of May 20, 2012.

If the employer had not shut down for a week, the claimant would have worked the week of May 20. The claimant returned the work the week of May 27, 2012.

A determination was mailed to the claimant and employer on June 19, 2012. This determination informed the parties the claimant was denied benefits as of May 20, 2012, because he was unable to work as the result of an injury. Information on the determination informed the parties an appeal had to be filed or postmarked on or before June 29, 2012. The claimant does not remember receiving the June 19 determination.

English is not the claimant's native language and he does not understand everything he receives in the mail. The claimant went to his local Workforce office after he received an overpayment determination that was mailed to him on June 26, 2012. When the claimant went to his local Workforce office, he asked why he was overpaid. The representative advised him to appeal both the June 19 and the overpayment determinations. The claimant filed his appeal at his local Workforce office on July 2, 2012.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the June 29, 2012 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence indicates the claimant did not receive the June 19 determination. If he received it, he did not understand it.

The claimant established a legal excuse for failing to file a timely appeal. Under 871 IAC 24.35(2), the claimant is excused from filing a late appeal. This means the Appeals Section has jurisdiction to make a decision on the merits of his appeal.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). The evidence establishes the claimant was injured in early December 2011 and was off work until May 9, 2012. The claimant's doctor released him to work and the claimant worked May 9 through 20. The claimant did not work the week of May 20 because the employer went on a short-term layoff. The claimant was able to and available to work this week. The claimant returned to work the week of May 27, 2012. The claimant is eligible to receive benefits for the week May 20 through 26, 2012.

DECISION:

The representative's June 19, 2012 determination (reference 01) is reversed. The claimant filed a late appeal but established a legal excuse for filing his appeal late. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant was released to work as of May 9 and was able to and available to work the week of May 20, 2012. He is eligible to receive benefits for this week, a week the employer was on a short-term layoff.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css