

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY AWAD**  
Claimant

**APPEAL NO: 12A-UI-00853-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/20/11  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a representative's December 23, 2011 determination (reference 03) that held him ineligible to receive benefits as of November 20, 2011, because he was injured and unable to work. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant did not file a timely appeal so the December 23 determination cannot be changed.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of November 20, 2011. On December 23, 2011, a representative's determination was mailed to the claimant. The determination stated the claimant was not eligible to receive unemployment insurance benefits as of November 20, 2011, because he was injured and unable to work.

The determinations also informed the claimant an appeal had to be filed or postmarked on or before January 2, 2012. The claimant did not file an appeal immediately. Instead he presented additional medical information that resulted in a December 30, 2011 determination (reference 04). Reference 04 held the claimant eligible to receive benefits as of November 27, 2011, because the additional medical information established he was able to and available for work as of that date.

The Appeals Section considered the claimant to have appealed the December 23 determination when he filed an appeal on January 13, 2012, at his local Workforce office.

**REASONING AND CONCLUSIONS OF LAW:**

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from

the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations 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 claimant's appeal was filed after the January 2, 2012 deadline for appealing expired. The claimant may have reasonably believed this matter was resolved when he received a December 30, 2011 determination holding him eligible to receive benefits as of November 27, 2011, because additional medical information established that he was medically able to work as of that date.

Even though the claimant did not establish a legal excuse for filing a late appeal on January 13, 2011, 871 IAC 24.35(2), the December 30, 2011 determination held him medically available to work a week later or as of November 27, 2011.

Eligibility is based on whether a claimant is able to and available for work. In this case, the claimant did not file a timely appeal from a December 23 determination that held him ineligible to receive benefits as of November 20 because he was not able to work. After the claimant provided additional medical information, the Department issued another determination that held he was then medically able to work as of November 27. The claimant met eligibility requirements to receive benefits as of November 27, 2011. Based on the reasons for his employment separation from Central Iowa Hospital Corporation, the claimant is not qualified to receive benefits. See decision for appeal 12A-UI-00851-DWT. To requalify for benefits, the claimant must earn ten times his weekly benefit amount.

#### **DECISION:**

The representative's December 23, 2011 determination (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of this appeal. This means the claimant remains ineligible to receive benefits as of November 20, 2011, because he was not medically able to work then. Based on additional information, another decision was issued, reference 04 that held the claimant medically able to work as of November 27, 2011.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css