

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY P MURPHY
Claimant

APPEAL NO: 12A-UI-14295-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/27/11
Claimant: Appellant (1)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 2, 2011 determination (reference 03) that held him ineligible to receive benefits for the week ending March 26, 2011, because he was out of town the majority of the week. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, and the law, the claimant was not eligible to receive benefits for the week ending March 26, 2011.

ISSUES:

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

Was the claimant available to work and eligible to receive benefits for the week ending March 26, 2011?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 27, 2011. Before he established his claim, the claimant made arrangements to be out-of-state during spring break. He told his local Workforce representative he would not be available for work the week ending March 26, 2011. The claimant understood he would not receive benefits for this week and that was fine with him.

The claimant filed a claim for benefits for the week ending March 26, 2011. When he called in this weekly claim, he reported that he was not available for work. The claimant received benefits for this week. After the claimant received a May 2, 2011 determination that held him ineligible to receive benefits for the week ending March 26, 2011, and because he had received benefits for this week, the claimant went to his local Workforce office. The claimant believed he had done everything correctly and did not understand why he received the May 2 determination and benefits for the week ending March 26 when he had not expected to receive any benefits for this week. The local Workforce representative told the claimant that he would take care of the matter and there was nothing else the claimant needed to do. The claimant relied on the

representative's assurance that this matter would be taken care of so the claimant did not file a written appeal.

After the claimant received a November 27, 2012 overpayment determination, he filed a written appeal on December 4, 2012. The claimant appealed because he believed the overpayment should have been taken care of more than a year ago. The claimant filed weekly claims until late-June 2011 so the overpayment could have been offset then if the representative had followed through with his representation.

REASONING AND CONCLUSIONS OF LAW:

The law states 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 decision 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, a written appeal was filed after the May 12, 2011 deadline for appealing expired.

The claimant's failure to file a timely appeal was due to Agency misinformation. After the claimant received the May 2, 2011 determination, he immediately talked to his local representative because he understood he had done everything correctly and had not expected any benefits for the week ending March 26, 2011. When representative told the claimant that he would take care of this matter, the claimant took the representative at his word and did not believe he needed to file a written appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal.

Each week a claimant files a claim, he must be able to and available for work. Iowa Code § 96.4(3). The claimant did not expect any benefits for the week ending March 26, 2011, because he was going to be out-of-state on a vacation for the majority of that week. Since the claimant told his local representative about his plans to be out-of-state and properly reported that he was not available for work that week when he called in this claim, the claimant did not expect to receive benefits for this week. The claimant's understanding was correct. He was not eligible to receive benefits for the week ending March 26, 2011, because he was not available to work the majority of that week. 871 IAC 24.23(25).

DECISION:

The representative's May 2, 2011 determination (reference 03) is affirmed. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant is not eligible to receive benefits for the week ending March 26, 2011, because he was not available for work the majority of that week when he was out of town on a vacation.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll