

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY T BOLSINGER
Claimant

APPEAL NO: 11A-UI-16290-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 05/29/11
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Same Hours and Wages
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 30, 2011 determination (reference 04) that held him ineligible to receive benefits as of July 17, 2011, because he was not considered partially unemployed. The claimant participated in the hearing. Shannon Hagensten appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of July 17, 2011.

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 May 29, 2011. On November 30, 2011, a representative's determination was mailed to the claimant and employer. The determination informed the parties the claimant was not eligible to receive benefits as of July 17, 2011, because he was not considered partially unemployed. The determination also informed the parties an appeal had to be filed or postmarked no later than December 10, 2011.

The claimant does not know when he received the November 30 determination, but it was probably by December 3 or 4. The claimant received an overpayment determination that was mailed on December 14, 2011. He mailed his appeal letter on December 17 or 18, 2011.

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 December 12 deadline for appealing expired. (Since December 10 was a Saturday, the deadline to appeal was automatically extended to Monday, December 12, 2011.)

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant changed his testimony during the hearing. First, he testified that he received the determination by December 3 or 4, but later did not think he had received the determination. When the claimant believed he received the determination, he testified that he did not file an appeal until December 17 or 18 because he was busy with the holiday season, his family, and work. The claimant's appeal letter does not indicate that he did not receive the November 30 determination or even that he had just received it. Based not the claimant's changing testimony, the administrative law judge concludes he had an opportunity to file a timely appeal but was busy with daily activities and did not file his appeal until December 17 or 18.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal. This means the November 30, 2011 determination cannot be changed.

If the claimant had established a legal excuse for filing a late appeal, the issue of whether he had reasonable assurance of returning to work as of July 17 would have been remanded to the Claims Section to determine.

DECISION:

The representative's November 30, 2011 determination (reference 04) 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 his appeal. This means the claimant remains ineligible to receive benefits as of July 17, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw