

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNIE W NOLL
Claimant

APPEAL NO. 12A-UI-14323-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/22/10
Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 4, 2011, reference 03, that concluded he was not able to and available for work. A telephone hearing was held on January 8, 2013. The claimant participated in the hearing. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 4, 2011. The decision concluded he was not able to work due to surgery starting April 4, 2011, and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 14, 2011.

The claimant received the decision within the ten-day period for appealing the decision. He did not appeal the decision at that time.

A decision was mailed to the claimant's last-known address of record on November 29, 2012. The decision concluded he was overpaid \$1,616.00 in benefits from April 4 to April 30, 2011. He filed a written appeal from that decision on December 6, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal from the decision denying him benefits. After he was reminded about his shoulder surgery, the claimant testified that he probably received the decision and did not appeal it because he did not disagree with it.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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, the claimant's appeal from the denial of benefits was filed after the deadline for appealing expired.

The 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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decision dated May 4, 2011, reference 03, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision denying him benefits effective April 4, 2011, remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css