

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN D SPILDE
Claimant

APPEAL NO. 11A-UI-09549-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 03/21/10
Claimant: Appellant (1/R)

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 17, 2011 determination (reference 03) that held him ineligible to receive benefits as of April 17, 2011, because he could not be considered partially unemployed. Neither party responded to the hearing notice or participated at the August 11, 2011 telephone hearing. Based on the administrative record and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of April 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 reopened his claim for benefits during the week of April 17, 2011. On June 17, 2011, a representative's determination was mailed to the claimant and employer indicating the claimant was not eligible to receive benefits as of April 17, 2011. The determination also informed the parties an appeal had to be filed or postmarked on or before June 27, 2011.

The claimant filed his appeal on July 6, 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 June 27, 2011 deadline for appealing expired.

The record does not establish that the claimant's failure to file a timely appeal was 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) excuses 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 his appeal.

DECISION:

The representative's June 17, 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 his appeal. This means the claimant remains ineligible to receive benefits as of April 17, 2011. The claimant remains ineligible until he reopens his claim and establishes his eligibility to receive benefits. An issue of overpayment for benefits the claimant may have received since April 17, 2011 is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw