

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN E STRICKLER
Claimant

APPEAL NO: 11A-UI-14302-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COWAN ROOFING INC
Employer

OC: 10/11/09
Claimant: Appellant (1)

Iowa Code § 96.5(3)a – Refusal to Accept Recall to Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 14, 2010 determination (reference 02) that disqualified him from receiving benefits as of March 22, 2010, because he refused the employer's recall to return to work. The claimant responded to the hearing notice, but was not available for the hearing. A message was left for him to call the Appeals Section immediately, but he did not. Jackie Cowan appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge finds the claimant did not file a timely appeal which means he remains disqualified from receiving benefits as of March 22, 2010.

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 October 11, 2009. On April 14, 2010, a representative's determination was mailed to the claimant and employer. The determination held the claimant disqualified from receiving benefits as of March 22, 2010, because he refused the employer's recall to return to work. The determination also informed the parties they had until April 24, 2010, to file or postmark an appeal.

The claimant filed his appeal on October 31, 2011, after he received an October 21, 2011 overpayment determination.

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 April 26, 2010 deadline for appealing expired. Since April 24 was a Saturday, the deadline to appeal was automatically extended to Monday, April 26, 2010.

The claimant did not establish that his 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) would excuse the delay in filing an appeal. Since 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 make a decision on the merits of the appeal.

DECISION:

The representative's April 14, 2010 determination (reference 02) 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 disqualified from receiving unemployment insurance benefits as of March 22, 2010. This disqualification continues until he has been paid ten times her weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css