

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN R MC GRIFF
Claimant

APPEAL NO: 14A-UI-06165-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC
Employer

OC: 10/13/13
Claimant: Appellant (2)

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 April 23, 2014 determination (reference 02) that held him ineligible to receive benefits as of February 16, 2014, because he had been injured was unable to work. The claimant participated at the July 9 hearing. Crystal Vander Werff and Cyndi Mahlstadt 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 remains eligible to receive benefits as of February 16, 2014.

ISSUES:

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

Is the claimant able to and available for work as of February 16, 2014?

FINDINGS OF FACT:

The employer assigned the claimant to a job that required the claimant to be on his feet six hours a day. This job was supposed to have started on February 19, 2014. The claimant broke his ankle just before he was to have started this assignment. The claimant notified the employer that he was unable to do the job he had been assigned because it required him to be on feet for six more hours a day.

The claimant has worked in customer service and the employer had assigned the claimant to desk jobs. After the claimant broke his ankle, he could work a desk job and asked the employer for a desk job assignment. The employer did not have any job to assign to him that allowed him to sit while working.

An April 23 determination (reference 02) was mailed to the claimant and employer. The determination held the claimant ineligible to receive benefits as of February 16, 2014, and informed the parties an appeal had to be filed or postmarked on or before May 3, 2014.

The claimant did not receive this determination. About the same time that he received a June 3, 2014 overpayment determination, he found this April 23 determination and another April 23 taped to his door. The claimant assumed the determinations had been delivered to a neighbor in error and the neighbor did not give them to the claimant until early June.

The claimant filed his appeal on June 13, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that 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, the appeal was filed after the June 3, 2014 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *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 did not have an opportunity to file a timely appeal because he did not know about the April 23 determination until early June.

The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Bureau has the legal authority to make a decision on the merits of the appeal.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). Since the claimant received an overpayment determination as a result of the April 23 determinations, he must be able to and available for work during weeks he has filed a claim for benefits.

The facts indicate the claimant has work experience as a customer service representative and the employer has assigned him to jobs that did not require him to stand. Even though the claimant was not available to do the job that he planned to start on February 19 because it required him to be on his feet for six or more hours, a claimant does not have to be able to and available for all jobs. He just has to establish his availability for meaningful employment in which he has experience. The claimant established that as of February 19, he was still able to and available for work.

DECISION:

The representative's April 23, 2014 determination (reference 02) is reversed. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Bureau has jurisdiction to address the merits of his appeal. Even though the claimant broke his ankle and was unable to do work that required him to be on his feet, the claimant established he was able to and available for work that allowed him to sit and the claimant has work experience in these types of jobs. As of February 16, 2014, the claimant remains eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css