

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AGUSTIN E MARTINEZ
Claimant

APPEAL NO: 14A-UI-01012-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/30/13
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Availability for Work
871 IAC 24.2(1) – Failure to Report as Directed
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 24, 2013 determination (reference 01) that denied him benefits as of December 15, 2013, because he had not reported to his local Workforce office as directed. The claimant participated at the February 18 hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds is not denied benefits as of December 15, 2013.

ISSUES:

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

Did the claimant fail to report to his local Workforce office as directed?

Is the claimant denied benefits as of December 15, 2013?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of June 30, 2013. The claimant filed a claim for the week ending December 21, 2013. When he checked his bank account during the week ending December 27, he noticed he had not received any benefits for the week ending December 21. The claimant called his local Workforce office and learned his claim had been locked. The claimant did not understand why it had been locked. The representative told the claimant to call, Dave, about his locked claim. The claimant called Dave's phone number twice a day for a week. He had to leave a message each time he called. When the claimant did not receive a return call, he called his local Workforce office and was given another person's name to call. This person responded to the claimant's call. The claimant told this representative that he had not received any letter or notice informing him he had to make two job contacts a week or that he was to report to his local Workforce office. The claimant explained that he had been making job contacts for over month. The representative told the claimant that his address had been updated to his new address and that he had to apply on the

Iowa Works web site to be eligible to receive benefits. The claimant followed this instruction. The claimant understood that if followed these instructions he would receive benefits. Still the claimant did not receive benefits for the weeks ending December 21 and 28. The claimant did not file any weekly claims after December 28 because he started a new job.

On December 24, 2013, a determination was mailed to the claimant's former address. This determination denied him benefits as of December 15, 2013, because he had not reported to his local Workforce office as directed or did not follow directions a representative gave him. The determination also stated an appeal had to be filed or postmarked on or before January 3, 2014. The claimant did not receive the December 24 determination.

When the claimant still did not receive benefits, he called his local workforce office again on January 29. This time he was told he had to appeal the December 24 determination that had locked his claim or prevented him from receiving benefits for the weeks ending December 21 and 28, 2013. The claimant went to his local Workforce office on January 29 and filed his appeal from the December 24, 2013 determination.

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 January 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). In this case, the claimant did not receive the December 24 determination. The claimant established a legal excuse for filing a late appeal on January 29, 2014. 871 IAC 24.35(2). As a result of the claimant establishing a legal excuse for filing a late appeal, the Appeals Bureau has legal authority to make a decision on the merits of the claimant's appeal.

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. 871 IAC 24.23(11).

The claimant's testimony that he did not receive a letter or a notice that he needed to go to his local Workforce office or follow a representative's directions is credible since the claimant moved. A claimant cannot be denied benefits when he did not receive the notice or instructions. As a result, the claimant is not denied benefits for the weeks ending December 21 and 28, 2013.

DECISION:

The representatives' December 24, 2013 determination (reference 01) is reversed. The claimant filed a late appeal, but established a legal excuse for his late appeal. The Appeals Bureau has jurisdiction to address the merits of the claimant's appeal. Since the claimant did not receive a notice to report to his local office or that a representative required him to do anything, the claimant cannot be denied benefits for something he did not know about. The claimant is eligible to receive benefits for the weeks ending December 21 and 28, 2013.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs