

ISSUE:

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

Is the claimant available to work as of February 20, 2005?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 20, 2005. On March 7, 2005 a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was not eligible to receive benefits as of February 20, 2005, because his doctor had not released him to work. (Claimant's Exhibit One, page 2)

The claimant received the representative's decision on or about March 10, 2005. (Claimant's Exhibit One, page 1) The claimant read and understood he was not eligible to receive benefits because his doctor indicated he was not available to work. The March 7 decision informed the parties that the decision became final unless an appeal was postmarked by March 17, 2005.

About the same time the claimant received the March 7 representative's decision, the claimant also received a notice that a telephone interview would be held on March 17, 2005. The notice indicated the issue that was to be resolved was a discharge issue. (Claimant's Exhibit One, page 3) As a result of the fact-finding interview, a representative issued a decision on March 21, 2005, that concluded the claimant was disqualified from receiving benefits because he had been discharged for disqualifying reasons.

On March 22, 2005, the claimant's attorney filed an appeal from the March 7 (reference 02) decision. On July 7, 2005, the claimant's attorney asked what needed to be done so the claimant could receive benefits as of February 20, 2005.

The claimant was under a doctor's care and was unable to work for a period of time. The claimant does not know when his physician released him to return to work. When he was released to work, the claimant had a work restriction of limited pushing and pulling. The record indicates the claimant established a claim for benefits but did not continuously file weekly claims until the week ending March 5, 2005. When the claimant filed his claims, he looked for work. But the claimant acknowledged the work he looked for was not appropriate for him. The claimant did not indicate what specific work he looked for or whether he had work experience in the jobs he inquired about.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 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 was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. 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 had a reasonable opportunity to file a timely appeal, but did not.

The claimant's 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. The claimant's attorney asserted the claimant did not understand the information he received because of his limited English. The claimant, however, testified that he read and understood English. A preponderance of the evidence established the claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

In the alternative, assume the claimant had a legal excuse for filing a late appeal. Each week he files a claim for benefits, he must be able to and available for work. Iowa Code §96.4-3. The law presumes a claimant is not available when a claimant is not willing to accept work in his usual occupation and fails to establish what other types of work he can perform. 871 IAC 24.23(19). Even though the claimant is not required to work the same job he had with his former employer, the claimant failed to establish what other work he had experience doing and was applying for. Additionally, the facts do not establish when the claimant's physician released him to return to work. Based on the facts presented during the hearing, the claimant did not establish he was available to work between February 20 and May 9, 2005. As of May 9, the evidence indicates the claimant reached maximum medical improvement and was able to and available for work.

DECISION:

The representative's March 7, 2005 decision (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no legal jurisdiction to address the merits of the claimant's appeal. In the alternative, if the claimant had a legal excuse for filing a late appeal, he is not able to work February 20 through May 9, 2005. As of May 9, 2005, the claimant was able to and available for work.

dlw/tjc