

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANISA M KENNEDY
Claimant

APPEAL NO. 12A-UI-14472-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/03/11
Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 5, 2011, reference 01, that concluded she was not able to and available for work. A telephone hearing was held on January 8, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Pamela Kiel participated in the hearing on behalf of the employer with a witness, Josh Clark. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer from September 2007 to December 23, 2010. She injured her knee in a skiing accident on January 1, 2011, which required surgery in February. She was off work on medical leave.

The claimant filed a new claim for unemployment insurance benefits effective April 3, 2011, because she was not working and needed some income.

As of April 3, 2011, the claimant was still on medical leave because she had not been released to return to full-time work yet.

The claimant was released by her doctor without restrictions on May 3, 2011, and returned to work.

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 5, 2011. The decision concluded she was not able to and available for work and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 15, 2011.

The claimant never received the decision. She filed a written appeal on December 11, 2012, after receiving a decision stating she was overpaid unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

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 claimant did not have a reasonable opportunity to file a timely appeal because she never received the disqualification decision within the ten-day period for appealing. Her appeal is deemed timely.

The issue in this case is whether the claimant was able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3 as of April 3, 2011.

The unemployment insurance rules provide that a person is who is not able to work and is under the care of a medical practitioner and has not been released to return to work is ineligible for benefits. 871 IAC 24.23(35). The claimant is ineligible for benefits effective April 3, 2011.

DECISION:

The unemployment insurance decision dated May 5, 2011, reference 01, is affirmed. The claimant is ineligible for benefits effective April 3, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs