

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R HOWELL
Claimant

APPEAL NO: 10A-UI-16140-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/08/10
Claimant: Appellant (2)

871 IAC 24.2(1)e – Failure to Report as Directed
Iowa Code § 96.6-2 – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 1, 2010 determination (reference 02) that denied him benefits as of October 24, 2010, because he had not reported to his local Workforce office as directed. The claimant participated in a phone hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant eligible to receive benefits as of October 24 or for the weeks ending October 30, and November 6 and 13, 2010.

ISSUES:

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

Should the claimant be denied benefits as of October 24, 2010, for failing to report to his local Workforce office as directed?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of August 8, 2010. In early October, the claimant received a notice that he was to report to his local Workforce office to complete some information, his work history. The claimant went to his local Workforce office and used a computer at the office to enter his work history information. He saved the information he inputted and left. A few days later, the claimant was at his local Workforce office again and checked on the information he had previously entered. It was not there.

The claimant re-entered the information a number of times. When the information he had inputted and saved was not there, he asked a representative to help him. The information still had not been saved when the representative helped him.

On November 1, 2010, a representative's determination was mailed to the claimant. This determination informed him he was denied benefits as of October 24, 2010, because he had not reported to his local Workforce office as directed to do. The determination also contained information that an appeal had to be filed or postmarked on or before November 11, 2010.

The claimant did not receive the representative's November 1, 2010. It was not until mid-November that the claimant tried to use his debit card and realized he did not have any money or benefits to use. He went to his local Workforce office so someone would explain why he did not have any money on his debit card. A representative told him that information about his work history was still not in the computer. It took the claimant all day on November 19, 2010, to get his work history inputted into the computer and then saved. After the claimant inputted his information, his claim was reopened and he was considered eligible to receive benefits again as of November 14, 2010.

On November 22, a representative told him about the November 1, 2010 determination and that he would not receive benefits for three weeks. The claimant filed his appeal that same day, November 22, 2010.

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 November 12 deadline for appealing expired. Since November 11 was a federal holiday, the deadline to appeal was automatically extended to November 12, 2010.

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 did not have a reasonable opportunity to file a timely appeal because he did not receive the November 1 determination. 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. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to address 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's failure to report as directed without justifiable cause shall make a claimant ineligible to receive benefits until he reports as a representative had directed her to do. Justifiable cause is defined as an important and significant reason that a reasonable person would consider adequate. Since the claimant did not receive a second notice to report to his local Workforce office, he cannot be denied benefits as of October 24, 2010. Also, if the problem occurred because the claimant's work history was not in the computer, he established that he went to his local Workforce at least twice in October to input this information into the computer. The claimant took reasonable steps to input his work history into the computer. The claimant also demonstrated that when he knew there was a problem, he took reasonable steps to resolve the problem.

DECISION:

The representative's November 1, 2010 determination (reference 02) is reversed. Although the claimant did not file a timely appeal, he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant was not directed to report to his local Workforce office in late October because he did not receive the notice to report. Since he did not know he was supposed to report, he cannot be denied benefits for the weeks ending October 30, and November 6 and 13. The claimant is eligible to receive benefits for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs