

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOM E KRIZ**  
Claimant

**APPEAL NO: 10A-UI-08948-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/02/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Ability to and Availability for Work  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a representative's May 17, 2010 decision (reference 02) that held him ineligible to receive benefits as of the week ending August 8, 2009, because he was not able to work. A telephone hearing was held on August 11, 2010. The claimant participated in the hearing with his attorney, Bob Rush. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

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

As of August 8, 2009, is the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant has worked as a machinist the majority of his life. The claimant was injured in June 2009. When his doctor released him to work in early August 2009, the claimant was restricted from operating any machinery and climbing any ladders. The claimant's most recent employer did not have any work for him to do even though the claimant offered to sweep floors.

The claimant established a claim for benefits during the week of August 2, 2009. Although the claimant can sweep, he has not looked for any work. The claimant did not look for work because he hoped his former employer would call him back to work.

The claimant applied for Social Security Disability benefits. In December 2009, he received his first Social Security Disability benefit payment.

The claimant established a claim for benefits during the week of August 2, 2009. He has filed weekly claims since the week ending August 9, 2009. On May 17, 2010, a representative's decision was mailed to the claimant. This decision held him ineligible to receive benefits as of

August 8, 2009. The decision informed the claimant that the decision was final unless he filed an appeal or an appeal letter was postmarked on or before May 27, 2010.

The claimant did not receive the representative's May 17 decision. After he received a June 17, 2010 decision that held him overpaid as a result of the May 17 decision, the claimant went to his local Workforce office to find out about the May 17 decision. On June 21, the claimant filed an appeal from both decisions. June 21 was the first time he received a copy of the May 17 representative's decision.

## **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 section 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 May 27, 2010 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 did not have a reasonable opportunity to file a timely appeal because he did not receive the May 17 decision.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or 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 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 section 96.4.3. As of August 2, 2009, the claimant was unable to work in his usual occupation as a machinist. Even though the claimant believed he could sweep floors and perform physical labor, he did not look for work. More importantly, the claimant applied for Social Security Disability benefits and has received these benefits since December 2009. When a claimant receives Social Security Disability benefits, a presumption exists that he is not able to work in meaningful employment. As a result of the claimant's receipt of Social Security Disability benefits and his failure to look for any meaningful work since August 2, 2009, the claimant has not established that he is able to and available to perform any meaningful work. Therefore, as of the week ending August 8, 2009, the claimant is not eligible to receive benefits.

**DECISION:**

The representative's May 17, 2010 decision (reference 02) is affirmed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant did not establish that he is able to and available for work since he applied for and receives Social Security Disability benefits and has not looked for any work. As of the week ending August 8, 2009, the claimant is not eligible to receive benefits because he is not able to and available for work for unemployment insurance purposes.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs