

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL P MUZIK
Claimant

APPEAL NO: 12A-UI-14147-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACME LIMITED
Employer

OC: 06/20/10
Claimant: Appellant (2)

Iowa Code 96.19(38)b – Partially Unemployed
Iowa Code § 96.6 (2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's May 2, 2011 determination (reference 01) that held him ineligible to receive benefits as of March 27, 2011, because he still worked for the employer at the same hours and wages that he had been hired to work and could not be considered partially unemployed. The claimant participated in the hearing. Mark Hankinson, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive partial benefits as of March 27, 2011.

ISSUES:

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

As of March 27, 2011, is the claimant partially unemployed and eligible to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in January 2010. The claimant worked varying hours or as the employer needed him. The claimant established a claim for benefits during the week of June 20, 2010. The claimant earned wage credits in his base period as follows:

EMPLOYER	2009/1	2009/2	2009/3	2009/4
CAMBREX CHARLES CITY INC	14022	12339		

A May 2, 2011 determination indicates both the claimant and employer were mailed a copy of this determination. The determination held the claimant ineligible to receive benefits as of March 27, 2011, because he was not considered partially unemployed. The determination also stated an appeal had to be filed or postmarked on or before May 12, 2011. Neither the claimant nor the employer received the early May 2011 determination.

The claimant filed an appeal on November 30, 2012, after he received a November 21, 2012 overpayment determination that included a copy of the May 2, 2011 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 May 12, 2011 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). Since the claimant did not receive the May 2, 2011 determination, he did not have an opportunity to file a timely appeal.

The evidence indicates the claimant's failure to file a timely appeal was due to an Agency error or an action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Section has the legal authority to make a decision on the merits of the appeal.

The employer is not one of the claimant's base period employers. Even though the claimant started working for the employer in January 2010, he began this employment only after his full-time job ended. The law states a claimant is considered partially unemployed in any week in which, while employed at his then regular job, the claimant does not work full-time hours and earns less than his weekly benefit amount plus \$15. Iowa Code § 96.19(38)b. A claimant is also considered partially unemployed in any week he is separated from his regular job and earns at odd jobs less than his weekly benefit amount plus \$15. Iowa Code § 96.19(38)c.

When the representative issued the May 2, 2011 determination, it appears he incorrectly relied on 871 IAC 24.23(26). If this regulation applies to this case, the claimant should not have been held eligible to receive benefits as of June 20, 2010, when he established his claim rather than as of March 27, 2011, when he reopened his claim. Since the claimant's claim is based on wages from CAMBREX CHARLES CITY INC, to hold him not partially unemployed defeats the purpose of a claimant accepting a part-time or as-needed job after becoming unemployed. 871 IAC 24.23(26) does not apply in this case.

The claimant is partially unemployed. He is eligible to receive partial benefits as of March 27, 2011.

DECISION:

The representative's May 2, 2011 determination (reference 01) is reversed. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant was partially

unemployed when he established his claim for benefits during the week of June 20, 2010, and this did not change when he reopened his claim during the week of March 27, 2011. As of March 27, 2011, the claimant is eligible to receive partial benefits for any subsequent week during his base period that he files a claim for and earns less than his weekly benefit amount plus \$15.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs