

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT E DERMODY

Claimant

APPEAL NO: 11A-UI-06964-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAYNE RHINER PLUMBING LLC

Employer

OC: 04/17/11

Claimant: Respondent (1/R)

Iowa Code § 96.5(3)a – Offer of Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 11, 2011 determination (reference 01) that held the claimant eligible to receive benefits because the employer had not offered him work on June 1, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Debbie Rhiner, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge concludes the employer did not file a timely appeal so the May 11 determination cannot be changed.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of April 18, 2010. He established a new benefit year during the week of April 17, 2011. On May 11, 2011, a representative's determination was mailed to the claimant and employer indicating the claimant was eligible to receive benefits because the employer had not offered the claimant work on June 1, 2010. The determination informed the parties this was the final decision unless an appeal was filed or postmarked on or before May 21, 2011.

The employer received the representative's determination on or before May 17, 2011, which is based on the date on the employer's appeal letter. The employer did not fax the appeal letter to the Appeals Section until May 25, 2011.

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 employer's appeal was filed after the May 23, 2011 deadline for appealing expired. (Since May 21 was Saturday, the deadline to appeal was automatically extended to Monday, May 23, 2011.)

The next question is whether the employer 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 employer had a reasonable opportunity to file a timely appeal, but did not.

The employer'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. Since the employer did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal. This means the May 17, 2011 determination cannot be changed.

During the hearing, the employer asserted the claimant had injured his knee in April 2010. As a result, he was unable to work. The employer understood the claimant has not yet been released to work. The issue of whether the claimant was eligible to receive benefits as of April 18, 2010, based on his ability to work will be remanded to the Claims Section to determine

DECISION:

The representative's May 11, 2011 determination (reference 01) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal from this determination. The Appeals Section has no jurisdiction to address the merits of the employer's appeal. This means the claimant is not ineligible to receive benefits as of June 1, 2010, based on the finding the employer did not offer him work then. An issue of whether the claimant was able to and available for work as of April 18, 2010 is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css