

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAVIN J GUENTHER
Claimant

APPEAL NO: 14A-UI-04727-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 02/02/14
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 5, 2014 determination (reference 01) that held him ineligible to receive benefits as of February 2, 2014, because he was not considered partially unemployed. The claimant participated at the May 27 hearing. Allen Cole appeared on the claimant's behalf. The employer's representative, Employers Edge, faxed a letter on May 15, 2014, indicating the employer was not contesting the claimant's receipt of benefits for the week ending February 7, because the claimant was off work that week due to a lack of work. Since there was a timeliness of appeal issue, the May 27 hearing was held.

Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant established a legal excuse for filing a late appeal and he is eligible to receive benefits for the week ending February 8, 2014.

ISSUES:

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

Was the clamant partially or totally unemployed the week of February 2, 2014?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 2, 2014. A determination was mailed to the claimant and employer on March 5, 2014, that denied the claimant benefits as of February 2, 2014, because he was still employed and working the same hours and wages that he had been hired to work. The March 5 determination was not correctly addressed. The determination contained only part of the claimant's mailing address. The claimant did not receive the March 5 determination.

As a result of the March 5, 2014 determination, on April 29, 2014, an overpayment determination was mailed to the claimant informing him he had been overpaid \$408 in benefits. The claimant then learned about the March 5 determination and appealed on May 5, 2014.

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 March 17, 2014 deadline for appealing expired. Since March 15 was a Saturday, the deadline to appeal was automatically extended to Monday, March 17, 2014.

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). The claimant did not have a reasonable opportunity to file a timely appeal because he did not receive the March 5 determination.

The claimant's failure to file a timely appeal was due to an Agency error by failing to mail the March 5 determination to the claimant's correct address or other 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 legal authority 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 § 96.4(3). The claimant was on a temporary layoff as the result of lack of work the week ending February 8, 2014. Therefore, he was unemployed this week. Iowa Code § 96.19(38). The claimant is eligible to receive benefits for the week ending February 8, 2014.

DECISION:

The representative's March 5, 2014 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 Bureau has jurisdiction to address the merits of the claimant's appeal. The claimant was on a temporary layoff the week of February 8, 2014. He is eligible to receive benefits for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css