

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J WERTHMANN
Claimant

APPEAL NO: 14A-UI-04651-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA COMMUNITY COLLEGE
Employer

OC: 12/15/13
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Eligibility between Academic Years
Iowa Code § 96.6(2) – Timely Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 21, 2014 determination (reference 01) that held him ineligible to receive benefits as of December 15, 2013, because he worked for an educational institution and was between academic terms. The claimant participated at the May 22 hearing. Debora Sullivan, the director, 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 not eligible to receive benefits as of December 15, 2013.

ISSUE:

Did the claimant 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 December 15, 2013. A January 21, 2014 determination was mailed to the claimant and the employer. The determination informed the parties the claimant was not eligible to receive benefits as of December 15, 2013, and an appeal had to be filed or postmarked on or before January 31, 2014.

The claimant received the determination in late January 2014. He did not file an appeal until after he received an April 29, 2014 overpayment determination. About this same time, the claimant understood other employees, who had similar jobs with the employer, received benefits between the employer's academic school years. The claimant filed his appeal at his local Workforce office on May 6, 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 January 31, 2014, the 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). The claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant'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) excuses the delay in filing an appeal. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to make a decision on the merits of the claimant's appeal. This means the January 21 determination cannot be changed and the claimant is not eligible to receive benefits as of December 15, 2013.

DECISION:

The representative's January 21, 2014 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to address the merits of the claimant's appeal. This means, the claimant remains ineligible to receive benefits as of December 15, 2013.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs