

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH A RENTSCHLER
Claimant

APPEAL NO. 07A-UI-10727-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 09/23/07 R: 02
Claimant: Appellant (1)**

Section 96.4-3 – Able to and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Jeremiah A. Rentschler (claimant) appealed a representative's November 2, 2007 decision (reference 02) that concluded he was not available to work as of September 23 because he was on a leave of absence from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2007. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. 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?

Was the claimant able to or available for work as of September 23, 2007?

FINDINGS OF FACT:

The claimant works for the employer. On September 14, 2007, the claimant's physician restricted him from working until November 15, 2007. When the claimant gave the employer his doctor's work restriction, the employer informed the claimant he could not work. The claimant completed paperwork for short-term disability. The claimant received short-term disability for two weeks.

The claimant talked his doctor into releasing him to return to work on October 9. After the claimant went to work on October 9, he became sick. The claimant's doctor again restricted the claimant from working. The claimant returned to work on October 31, when his doctor released him to work. The claimant still works for the employer.

The claimant established a claim for unemployment insurance benefits during the week of September 23, 2007. The claimant wanted to work even though his doctor restricted him from working. He filed weekly claims for benefits.

On November 2, 2007, a representative's decision was mailed to the claimant and employer indicating the claimant was not eligible to receive benefits as of September 23, 2007, because he was not available for work. The decision informed the parties an appeal had to be filed on or before November 12, 2007.

The claimant did not receive the representative's November 2 decision. The claimant sometimes has problems receiving his mail. The claimant received a decision issued on November 13 that held him overpaid based on the November 2 decision. After receiving the November 13, the claimant filed an appeal from both decisions on November 20, 2007.

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 § 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 November 12 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 November 2 decision.

The claimant's failure to file a timely appeal was due to a 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 unemployment insurance benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not qualified to receive benefits when a physician files a medical report stating the claimant is not presently able to work. 871 IAC 24.23(6). Even though the claimant wanted to work, his physician restricted him from working. For unemployment insurance purposes, the claimant was not able to work September 23 through October 30, 2007.

DECISION:

The representative's November 2, 2007 decision (reference 02) is affirmed. Even though the claimant did not file a timely appeal, he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. Since his doctor restricted the claimant from working September 14 through October 30, the claimant is not eligible to receive benefits for this time frame, because he was not able to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw