

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY D NANCE**  
Claimant

**APPEAL NO: 13A-UI-10117-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARION INDEPENDENT SCHOOL DIST**  
Employer

**OC: 07/14/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(5) – Eligibility Between Academic School Years  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 20, 2013 determination (reference 06) that held him ineligible to receive benefits for weeks between successive academic school years. The claimant participated in the hearing. Brian Bartz, the business manager, 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 between academic school years.

**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 July 14, 2013. An August 20, 2013 determination (reference 06) was mailed to the claimant and employer. The claimant received the determination by August 24 or 26. The determination held the claimant was not eligible to receive benefits between academic school years. Also, the determination informed the parties that the determination was final unless an appeal was filed or postmarked on or before August 30, 2013.

The claimant received several determinations because he worked as a substitute teacher at several schools during the 2012/2013 school year. He was confused and called a Department representative on August 30. He learned that if one determination held him not eligible to receive benefits, he would be denied benefits. The representative also advised the claimant to appeal on August 30.

The claimant was unable to get his appeal letter typed and faxed on August 30. He faxed his appeal letter on September 3, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision 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 August 30, 2013 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 facts establish the claimant received the determination before the August 30 deadline to appeal. He had an 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) would excuse the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the August 20, 2013 determination (reference 06) cannot be changed. The claimant remains ineligible to receive benefits between academic school years. If the claimant does not earn wages when school starts for the 2013/2014 school year, he may then be eligible to receive benefits if he files weekly claims.

**DECISION:**

The representative's August 20, 2013 determination (reference 06) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. This means the August 20, 2013 determination cannot be changed the claimant is not eligible to receive benefits between academic school years.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css