

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A GAC
Claimant

APPEAL NO: 14A-UI-12145-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY
Employer

OC: 09/28/14
Claimant: Appellant (1)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 21, 2014 determination (reference 03) that held her ineligible to receive benefits as of September 28, 2014, because she is unable to work as a result of illness. The claimant participated at the December 12 hearing. Jessica Dobbe, the human resource representative, 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 did not file a timely appeal so the Appeals Bureau does not have jurisdiction to address the issue of whether the claimant was able to work as of September 28, 2014.

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 unemployment insurance benefits during the week of September 28, 2014. On October 21, 2014, a determination (reference 03) was mailed to the parties' addresses of record. The claimant received the October 21 determination shortly after it was mailed.

On October 29, when the claimant moved from Nebraska to Michigan, she had received the determination, but had not yet appealed it. The determination informed the parties an appeal had to be filed on or before October 31, 2014.

Sometime after October 31, the claimant contacted a Workforce representative and asked how she could appeal. The claimant understood from this conversation, she had until December to appeal this determination. The claimant filed her appeal on November 19, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states 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 October 31, 2014, 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 received the October 21 determination before October 29, the day she moved to Michigan.

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. The claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Bureau does not have any legal authority to make a decision on the merits of the appeal.

Even though the claimant did not receive correct information about how long she had to appeal, she did not receive this information until after October 31, the deadline to file a timely appeal.

DECISION:

The representative's October 21, 2014 determination (reference 03) 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 jurisdiction to address merits of the claimant's appeal – whether she was able to work as of September 28, 2014. Therefore, the October 21, 2014 determination cannot be changed. The claimant remains ineligible to receive benefits until she earns ten times her weekly benefit amount and establishes that she is able to and available for work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css