

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH A MOSTEK**  
Claimant

**APPEAL NO: 13A-UI-09698-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/25/12**  
**Claimant: Appellant (1)**

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

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 3, 2013 determination (reference 03) that held him ineligible to receive benefits from September 9 through December 1, 2012, because his physician reported that he was not available to work these weeks. The claimant responded to the hearing notice but, was not available for the hearing when he was called. The claimant did not contact the Appeals Section again or respond to the message the administrative law judge left for him. Based on the administrative record and the law, the administrative law judge concludes the claimant did not file a timely appeal and the May 3, 2013 determination must be affirmed.

**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 March 25, 2012. He filed claims for the weeks ending September 15 through December 1, 2012. His physician reported that he was unable to work these weeks.

A May 3, 2013 determination was mailed to the claimant that held him ineligible to receive benefits for the weeks ending September 15 through December 1, 2013. The claimant filed an appeal from this determination on August 21, 2013, or after he received an August 16, 2013 overpayment determination.

**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 May 13, 2013 deadline for appealing expired.

The claimant did not establish that his failure to file a timely appeal was 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 claimant remains ineligible to receive benefits for the weeks ending September 15 through December 1, 2012.

**DECISION:**

The representative's May 3, 2013 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 Section does not have jurisdiction to address the merits of the claimant's appeal. This means the claimant remains ineligible to receive benefits for the weeks ending September 15 through December 1, 2012.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs