

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANDRE J BODDEN
Claimant

APPEAL NO: 13A-UI-01969-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/14/12
Claimant: Appellant (1/R)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 14, 2013 determination (reference 04) that held him ineligible to receive benefits as of December 23, 2012, because he was ill and unable to work. The claimant did not respond to the hearing notice or participate in the March 15, 2013 scheduled hearing. Based on the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 October 14, 2012. He filed weekly claims for the weeks ending December 29, 2012, and January 5 through 26, 2013.

A January 14, 2013 determination was mailed to the claimant that held he was not eligible to receive benefits as of December 23, 2012, because he was unable to work as of that date. The determination also informed the claimant that if he disagreed with the determination he had to file an appeal on or before January 24, 2013. The address the January 14, 2013 determination was mailed to is different than the address the claimant reported on February 20, 2013.

When the claimant went to his local Workforce office on February 20, he reported he received the January 14 determination on January 26, 2013. The claimant filed his appeal at his local Workforce office on February 20, 2013.

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 deadline for appealing expired. The claimant filed a late appeal.

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). Since the claimant did not participate in the hearing, it is not known what address the claimant lived at in mid-January 2013. It is assumed the claimant's mail was forwarded to him, which would explain why he did not receive the January 14 determination until January 26, 2013, or after the ten-day deadline to appeal.

The reason the claimant failed to appeal for almost a month after he received the January 14 determination is not known because he did not participate in the hearing. As a result, the record does not establish that the claimant has a legal excuse for waiting almost a month after he received the January 14, 2013 determination. The Appeals Section does not have legal jurisdiction to address the merits of his appeal.

Since ability and availability for work must be addressed each week a claimant files a claim for benefits, he must provide information to the Claims Section when he was able to work after December 30, 2012, if he wants to be eligible for benefits after December 29, 2012. Iowa Code § 96.4(3).

An issue of overpayment of benefits will be remanded to the Claims Section for benefits the claimant may have received since December 23, 2012.

DECISION:

The representative's January 14, 2013 determination (reference 04) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. This means the claimant not eligible to receive benefits as of December 23, 2012, because he was unable to work.

The issue of overpayment of benefits the claimant may have received since December 23, 2012, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs