

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL P VAN LOON
Claimant

APPEAL NO: 12A-EUCU-00191-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/03/10
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 17, 2011 determination (reference 06) that held him ineligible to receive benefits for the weeks ending April 16 and 23, 2011, because he was out of town and was not available to work. The claimant participated in the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits for the weeks ending April 16 and 23, 2011.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Was the claimant available for work the weeks ending April 16 and 23, 2011?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of October 3, 2010. He filed a claim for benefits for the weeks ending April 16 and 23, 2011. He did not expect to receive benefits for these weeks. When he filed a claim for these weeks, he reported he was out of town and had not looked for any work.

On May 17, 2011, a determination was issued. This determination (reference 06) informed the claimant he was not eligible to receive benefits for the weeks ending April 16 and 23, 2011, and that if the determination was not reversed on appeal, he would be overpaid for benefits he received for these weeks. The claimant did not receive the May 17, 2011 determination until early July 2012. The determination he received was postmarked June 29, 2012. The claimant filed his appeal on July 9, 2012.

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 more than a year after the deadline for appealing expired.

The next question is whether 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 receive the May 17, 2011 determination until early July 2012, he did not have a reasonable opportunity to file a timely appeal.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or 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 timely appeal, the Appeals Section has legal authority to make a decision on the merits of the appeal.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). The claimant does not dispute that he was not eligible to receive benefits for weeks ending April 16 and 23, 2011, because he was out of town for personal reasons and was not looking for work or available to work. The claimant is not eligible to receive benefits for the weeks ending April 16 and 23, 2011, because he was not available to work.

DECISION:

The representative's May 17, 2011 determination (reference 06) is affirmed. The claimant did not file a timely appeal, but established a legal excuse for filing late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant is not eligible to receive benefits for the weeks ending April 16 and 23, 2011, because he was out of town for personal reasons and was not available to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs