

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D ZIMMERMAN
Claimant

APPEAL NO: 10A-UI-03908-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STATES MILLWRIGHT & BUILDERS
Employer

**OC: 01/17/10
Claimant: Appellant (1)**

Section 96.4-3 – Able to and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's February 24, 2010 decision (reference 01) that held him ineligible to receive benefits as of January 17, 2010, because he was not to able perform his job for the employer. A telephone hearing was held on April 13, 2010. The claimant participated in the hearing. Dale Erickson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Is the claimant able to and available for work as of January 17, 2010?

FINDINGS OF FACT:

The claimant has worked about five years for the employer. His job as millwright requires him to lift more than 20 pounds and climb ladders and go and up down stairs in the field.

In July 2009, the claimant hurt his knee when he was not at work. The claimant tore his ACL. The claimant worked until he had knee surgery in late November. Initially, the claimant planned to return to work on January 4, 2010. The claimant's physician did not release him to work until January 17, 2010.

Although the claimant was released to work, he had work restrictions. The restrictions included not lifting more than 20 pounds, no climbing ladders or going up and down stairs. The claimant's work restrictions prevented him from working in the field. The employer did not have any work in the shop for the claimant to do that would accommodate his 20-pound weight restriction. The employer told the claimant there was no work for him with these work restrictions.

On February 17, 2010, the claimant's physician removed the 20-pound weight restriction. The claimant still had some restrictions regarding ladders and steps. The employer had work for the claimant when he no longer had a 20-pound weight restriction. The claimant returned to work the week of February 22, 2010.

The claimant established a claim for benefits during the week of January 17, 2010. On February 24, 2010, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not eligible to receive benefits as of January 17, 2010 because he was not able to perform his job.

The claimant received the representative's decision. He mailed his appeal in Maxwell on March 6, 2010. The decision indicated an appeal had to be filed or postmarked no later than March 6, 2010. The postmark on the envelope the claimant's appeal letter was in is not legible.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 claimant's appeal was filed on March 6 or before the deadline for appealing expired. Since March 6 was a Saturday, the deadline to appeal was automatically extended to Monday, March 8, 2010. The claimant filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merit of his appeal.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. When the claimant's physician released him to return to work on January 17, 2010, the claimant still had work restrictions. The 20-pound weight restriction limited the claimant to performing light-day work, not his regular work. As a result of the 20-pound weight restriction, the claimant had to unduly restrict the work he was willing or able to do until his doctor removed that restriction. As soon the 20-pound weight restriction was removed, the employer had work for the claimant. From January 17 through February 20, 2010, the claimant's work restriction limited his availability for work. He is not eligible to receive benefits during these weeks.

DECISION:

The representative's February 24, 2010 decision (reference 01) is affirmed. The claimant filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of his

appeal. As a result of the work restrictions the claimant had January 17 through February 20, 2010; the claimant was not available to do his regular job. He is not eligible to receive benefits during these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs