

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**PEDRO C CARMONA CRUZ  
406 WELLINGTON ST  
WATERLOO IA 50701 5937**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-03412-DWT  
OC: 02/13/05 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Pedro C. Carmona Cruz (claimant) appealed a representative's February 24, 2006 decision (reference 02) that held him ineligible to receive unemployment insurance benefits as of January 1, 2006, because he was unable to work. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 13, 2006. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the claimant, 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?

As of January 1, 2006, is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of February 15, 2005. The claimant reopened his claim the week of January 1, 2006.

The claimant started working for the employer on July 24, 2001. The claimant received a work-related injury on March 17, 2003. The claimant had returned to work after the injury. On January 3, 2006, the claimant was at work when he reported pain in his arm. The employer asked the claimant to see his physician to determine what caused the pain and if he could work.

In early January 2006 the claimant went on an approved medical leave of absence. As of the date of the hearing, April 13, 2006, the claimant's doctor has not released the claimant to return to work.

On February 24, 2006 a representative's decision was mailed to the claimant informing him that he was not eligible to receive benefits as of January 1, 2006 because an injury prevented him from working at that time. The claimant received the representative's decision in a timely manner, but he does not read or understand English. The claimant was unable to find anyone to translate the February 24, 2006 decision. After the claimant understood the February 24, 2006 decision, he appealed on March 22, 2006.

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 after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The 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. In this case since the claimant did not read or understand English, he had no understandable notice of what the February 24, 2006 decision said or the consequences until someone was able to translate the decision to him. Based on this extenuating circumstance, the claimant's appeal is timely. The Appeals Section has jurisdiction to make a decision on the merits of the appeal.

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code section 96.4-3. The facts establish that as of January 1, 2006, the claimant was unable to work. As of April 13, 2006, the claimant's doctor has not released the claimant to work. Therefore, the claimant is not able to work. As of January 1, 2006, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 24, 2006 decision (reference 02) is affirmed. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The claimant is not able to work as of January 1, 2006 and is not eligible to receive benefits as of January 1, 2006.

dlw/pjs