

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L MC CARL
Claimant

APPEAL NO: 12A-UI-04255-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUNTIE ANNE'S SOFT PRETZELS
Employer

OC: 10/11/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's April 6, 2010 determination (reference 03) that held her ineligible to receive benefits October 11, 2009, through January 9, 2010, because she was unable to work as the result of an injury. A hearing was scheduled on May 8, 2012. The claimant did not respond to the hearing notice or participate in the hearing. Amber Bambrough appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge finds the claimant did not file a timely appeal and remains ineligible to receive benefits October 11, 2009, through January 9, 2010.

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 11, 2009. She filed claims for the weeks ending October 17, 2009, through January 9, 2010. On April 6, 2010, a representative's determination was mailed to the claimant and employer. This determination held the claimant was not eligible to receive benefits for the above weeks because she had been injured and was not able to work. The determination also informed the parties an appeal had to be filed or postmarked on or before April 16, 2010.

An overpayment determination was mailed to the claimant on March 30, 2012. The Appeals Section received her faxed appeal on April 10, 2012.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 almost two years after the deadline for appealing the April 6, 2010 determination expired.

The record does not establish that the claimant's failure to file a timely appeal from the April 6, 2010 determination 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 file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's April 6, 2010 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 her appeal. This means the claimant remains ineligible to receive benefits for the weeks ending October 17, 2009, through January 9, 2010.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css