

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL D EVANS

Claimant

APPEAL NO: 11A-UI-15862-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY

Employer

OC: 05/22/11

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 September 12, 2011 determination (reference 02) that held the claimant ineligible to receive benefits as of August 21, 2011, because he was still working part time and could not be considered partially unemployed. The claimant did not respond to the hearing notice or participate in the hearing. Jaclyn Villafuerte appeared on the employer's behalf. Based on the administrative record, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of August 21, 2011.

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 claimant for benefits during the week of May 22, 2011. He reopened his claim the week of August 21, 2011. On September 12, 2011 a representative's determination was mailed to the claimant and employer. The determination held the claimant ineligible to receive benefits as of August 21, 2011. The determination informed the parties an appeal had to be filed or postmarked on or before September 22, 2011.

The claimant filed his appeal on December 13, 2011, at his local Workforce office. On his appeal, he indicated his appeal was late because he had not understood the steps he needed to take to appeal.

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 months after the September 22 deadline for appealing expired.

The claimant did not establish that his failure to file a timely appeal 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 establish a legal excuse for filing a timely appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's September 12, 2011 determination (reference 02) 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 his appeal. This means the claimant remains ineligible to receive benefits as of August 21, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs