

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD D DEWITT
Claimant

APPEAL NO: 13A-UI-08188-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEAPRTMENT**

OC: 02/13/11
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Availability for Work
871 IAC 24.2-1-e – Failure to Report
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 3, 2013 determination (reference 03) that held he was not eligible to receive benefits for the week ending December 8, 2012, because he did not report to his local Workforce office as directed.

The claimant participated in the August 9 hearing. Based on the evidence, the administrative record, the claimant's arguments, and the law, the administrative law judge concludes the claimant is eligible to receive benefits for the week ending December 8, 2012.

ISSUES

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

Was the claimant required to report information about the week ending December 8, 2012, to his local Workforce office by December 27, 2012?

FINDINGS OF FACT:

After the claimant returned from an overseas assignment with the military, he established a claim for benefits and went to school full time. The claimant was in school the week ending December 8, 2012. The claimant filed a claim for benefits for the week ending December 8, 2012.

A January 3, 2013 determination (reference 03) held the claimant ineligible to receive benefits for the week ending December 8, 2012, because he had not reported to his local Workforce office information about the week ending December 8, 2012, by December 27. The claimant did not know about the January 3 determination until he went to his local Workforce office in mid-March 2013 about another issue.

In mid-March 2013, a local representative sent information to Des Moines showing that the claimant was a full-time student in December 2012. The representative told the claimant that because he was a full-time student, his eligibility for the week ending December 8, 2012, was resolved. Based on the representative's statement, the claimant understood that the issue with the week ending December 8 had been resolved with his mid-March 2013 office visit.

The claimant then received a July 5, 2013 overpayment determination. He again went to his local office. This time he appealed the overpayment and the January 3, 2013 determinations on July 10, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision 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 after the January 14, 2013 deadline for appealing expired. Since January 13 was a Sunday, the deadline to appeal automatically extended to January 14.

The next question is whether the 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). The claimant could not file a timely appeal because he did not know about the January 3 determination until mid-March 2013.

The claimant's failure to file an appeal until July 10 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) would excuse the delay in filing an appeal. The claimant reasonably relied on the representative's statements that because he was in school in December 2012 the January 3 determination would be changed and he was eligible to receive benefits for the week ending December 8, 2012. The claimant established a legal excuse for filing a late appeal. The Appeals Section has legal authority to make a decision on the merits of the appeal.

The claimant understood he was to attend a training session the week of December 8, 2012. The administrative record does not indicate this, but the administrative records do indicate he was randomly selected to be audited to determine his availability the week of December 8, 2012. Notice that the claimant was to provide information about the week ending December 8, 2012, was mailed to him on December 18, 2012. A representative called the claimant on December 27 to talk to him, but the claimant was not available when he was called.

Neither the evidence nor the administrative record establishes the claimant is ineligible to receive benefits for the week ending December 8, 2012. Therefore, he is eligible to receive benefits for the week ending December 8, 2012. The fact he did not provide requested information by December 27 is another issue.

DECISION:

The representative's January 3, 2013 determination (reference 03) is reversed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The evidence does not establish that the claimant was not available for work the week ending December 8, 2012. Therefore, he is eligible to receive benefits for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs