

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS W BAACK
Claimant

APPEAL NO: 12A-UI-13316-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/02/11
Claimant: Appellant (1/R)**

Iowa Code § 96.5.5 – Pension Deduction
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 3, 2012 determination (reference 01) that held he was eligible to receive a reduced weekly benefit amount because his monthly pension payment prorated to a weekly amount would be deducted from his maximum weekly benefit amount. The claimant did not respond to the hearing notice or participate in the hearing. Based on the administrative record, and the law, the administrative law judge concludes the determination the claimant appealed from is affirmed because the claimant did not file a timely appeal.

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 2, 2011. On February 3, 2012, a determination was mailed to the claimant's address of record. The determination informed the claimant his monthly pension would be prorated to a weekly amount that would be deducted from his maximum weekly benefit amount. The determination also informed the claimant an appeal had to be filed or postmarked on or before February 13, 2012.

The claimant filed an appeal on October 31, 2012. In his appeal letter, the claimant asked why he had not received the reduced unemployment insurance benefits.

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 claimant filed his appeal after the February 13, 2012 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) excuses the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of his appeal.

Since the claimant did not participate in the hearing, it is not known if he disagreed with the February 3, 2012 determination. The claimant's primary question appears to be why he had not received reduced unemployment insurance benefits. This question is remanded to the Claims Section for a Claims Specialist to contact the claimant and answer his question.

DECISION:

The representative's February 03, 2012 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The monthly pension payment the claimant receives must be prorated to a weekly amount that is then deducted from his maximum weekly benefit amount. The claimant's question, "Why he has not received the reduced unemployment insurance benefit amount" is **Remanded** to the Claims Section for a Claims Specialist to contact the claimant and answer his question.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css