

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BONNIE L ROBB
Claimant

APPEAL NO. 23A-UI-02033-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/11/22
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available, Work Search Warning

STATEMENT OF THE CASE:

On February 26, 2023, Bonnie Robb (claimant) filed a late appeal from the September 27, 2022 (reference 01) decision that reminded the claimant she was required to engage in four reemployment activities, including three job applications, each benefit week and that warned she could be disqualified for benefits for future weeks in which she did not meet the reemployment activities requirements. The reference 01 decision referred to the claimant's claim for the week ending September 24, 2022 as the basis for the work search warning. After due notice was issued, a hearing was held on March 15, 2023. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-02034-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following IWD administrative records: the reference 01, 02 and 05 decisions, DBRO, KCCO, and the relevant www.iowaworks.gov materials.

ISSUE:

Whether the claimant's appeal from the September 27, 2022 (reference 01) work search warning decision was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Bonnie Robb (claimant) established an original claim for benefits that was effective September 11, 2022.

On September 27, 2022, Iowa Workforce Development mailed the September 27, 2022 (reference 01) decision to the claimant's rural Story City last-known address of record. The reference 01 decision reminded the claimant she was required to engage in four reemployment activities, including three job applications, each benefit week and that warned she could be disqualified for benefits for future weeks in which she did not meet the reemployment activities requirements. The reference 01 decision referred to the claimant's claim for the week ending September 24, 2022 as the basis for the work search warning. The reference 01 decision

stated the decision would become final unless an appeal was postmarked by October 7, 2022 or was received by the Appeals Section by that date. The claimant believes she did not see the reference 01 decision. The claimant keeps her unemployment insurance materials in a filing cabinet. At the time of the hearing, the claimant was only able to locate unemployment insurance decisions from February 2023. The claimant has not kept complete, accurate or timely records pertaining to her unemployment insurance claim. The weight of the evidence indicates the claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal, but disregarded and/or misplaced the reference 01 decision. The claimant did not take steps to file an appeal from the reference 01 decision by the October 7, 2022 appeal deadline or at any point prior to February 26, 2023.

Problems with the claimant's weekly claim reporting continued beyond the week that ended September 24, 2022 and beyond the reference 01 decision that was mailed on September 27, 2022. On October 28, 2022, an Iowa Workforce Development representative met with the claimant by telephone to address issues with the claimant's weekly claim for the week that ended October 15, 2022. The September 27, 2022 (reference 01) work search/reemployment activities warning decision would have been part of that discussion. On October 31, 2022, IWD entered a reference 02 decision that allowed benefits for the week that ended October 15, 2022, provided the claimant was otherwise eligible, based on IWD's verification of the claimant's work search activities for that week despite problems with the claimant's report for that week.

Problems with the claimant's weekly claim reporting continued into 2023, prompting a series of work search disqualification decisions. On February 23, 2023, Iowa Workforce Developed mailed a reference 05 decision to the claimant's address of record. The reference 05 decision denied benefits for the week that ended February 11, 2023, based on the deputy's conclusion the claimant failed to meet the reemployment activities requirements during that week and had previously been warned. The previous warning in question was the September 27, 2023 (reference 01) decision. The reference 05 decision included a March 5, 2023 deadline for appeal.

On February 26, 2023, the claimant completed and transmitted an online appeal from the February 23, 2023 (reference 05) decision. The Appeals Bureau received the appeal on February 26, 2022 and elected to docket the appeal as also a late appeal from the September 27, 2022 (reference 01) work search warning decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving

section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The weight of the evidence in the record establishes an untimely appeal from the September 27, 2022 (reference 01) work search/reemployment activities warning decision. The weight of the evidence, including evidence of the claimant's inadequate recordkeeping, establishes that the claimant received the reference 01 decision in a timely manner, had a reasonable opportunity to file an appeal by the appeal deadline, but unreasonably delayed filing the appeal from that decision to February 26, 2023. The reference 01 work search warning decision would have been part of the claimant's discussion with the IWD representative on October 28, 2022

regarding problems with the claim for the week ending October 15, 2022. The weight of the evidence indicates the February 26, 2023 appeal was an untimely appeal. The late appeal from the September 27, 2022 (reference 01) work search warning decision involved unreasonable delay attributable to the claimant and not attributable to IWD or the United States Postal Service. There is not good cause to treat the late appeal from the September 27, 2022 (reference 01) work search warning decision as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal from September 27, 2022 (reference 01) work search warning decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the September 27, 2022 (reference 01) work search warning decision was untimely. The work search warning decision remains in effect.



James E. Timberland
Administrative Law Judge

March 23, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.