

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMANUEL VASQUEZ
Claimant

APPEAL NO. 24A-UI-01631-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/15/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On February 10, 2024, Emanuel Vasquez (claimant) filed a late appeal from the April 27, 2022 (reference 09) decision that denied benefits for the week that ended March 19, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement during that week and had earlier been warned about the requirement. After due notice was issued, a hearing was held on March 4, 2024. Claimant participated and presented additional testimony through Irene Gonzalez. There were seven appeal numbers set for a consolidated hearing: 24AUI01629JTT, 24AUI01630JTT, 24AUI01631JTT, 24AUI01632JTT, 24AUI01633JTT, 24AUI01634JTT, and 24AUI01635JTT. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 07 through 13 (o.c. 08/15/21) decisions, DBRO, DBIN, KCCO, NMRO and KLOG. The administrative law judge took official notice of the clerk of court records pertaining to Polk County Case Numbers AGCR357348 and FECR358202 and Dallas County Case Number FECR045545, which records are available to the public at <https://www.iowacourts.state.ia.us/>

ISSUE:

Whether the appeal 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:

Emanuel Vasquez (claimant) established an original claim for benefits that was effective August 15, 2021. At the time the claimant applied for benefits, he resided with his girlfriend, Irene Gonzalez, in an apartment on Fleur Drive in Des Moines. The claimant gave Iowa Workforce Development that address as his mailing address. The claimant continued to reside at the Fleur Drive address until about February 14, 2022. The claimant then commenced living out of his vehicle for a period. The claimant continued to have his mail directed to the Fleur

Drive address. The claimant did not update his address with IWD until he attempted to establish a second benefit year effective August 14, 2022.

The claimant's interactions with Ms. Gonzalez gave rise to several criminal charges against the claimant in Polk and Dallas Counties and to issuance of a "five-year" no contact order in connection with the criminal charges. The criminal charges included multiple counts of harassment, as well as theft, burglary, unauthorized use of a credit card, and false report to law enforcement. The offense date for the Polk County charges was March 12, 2022. The claimant was arrested on the Polk County charges and was released to the supervision of the Department of Correctional Services (DCS) on March 13, 2022, after his initial appearance before the court. The claimant thereafter committed the additional criminal offenses in Dallas County on March 29, 2022. The claimant appeared for initial appearance in Dallas County District Court on March 29, 2022. It is unclear whether the claimant was held in custody on the Dallas County Charges. Court records reflect that the claimant provided the Dallas County Court with the Fleur Drive mailing address despite the no contact order that prevented him from going to that address or having contact with Ms. Gonzalez. The claimant plead guilty to, and was convicted of, multiple counts of felony harassment 1st degree, theft 3rd, burglary 3rd, unauthorized use of a credit card, and false report. See Polk County Case Numbers AGCR357348 and FECD358202 and Dallas County Case Number FECD045545.

During the time when the no contact order was in place, Ms. Gonzalez discarded any of the claimant's mail that was received at the Fleur Drive address.

Dallas County court records reflect that as of April 25, 2022, the United States Postal Service had stopped delivering the claimant's mail to the Fleur Drive address and had no forwarding address for the claimant. The same records reflect that the USPS deflected and returned to the court mail the district court sent to the claimant on or about June 27, 2022. See Dallas County Case Number FECD045545.

When the claimant attempted to establish a second benefit year effective August 14, 2022, he provided a mailing address on Cascade Avenue in West Des Moines. The claimant provided the same mailing address when he recently established a new benefit year that was effective December 24, 2023. The claimant has continued to use the same mailing address to the present.

On March 1, 2022, IWD Benefits Bureau mailed the March 1, 2022 (reference 07) decision to the claimant's Fleur Drive last-known address of record. The reference 07 decision determined that the claimant did not meet the reemployment activities requirements during the week that ended February 26, 2022. The reference 07 decision reminded the claimant that he was required to engage in four reemployment activities, including three job applications, each benefit week and warned the claimant he could be disqualified for benefits for future weeks in which he did not meet the work search requirement. The reference 07 decision stated the decision would become final unless an appeal was postmarked by March 11, 2022 or was received by the Appeals Section by that date. The weight of the evidence indicates the decision was delivered to the address of record in a timely manner, prior to the deadline for appeal. The claimant was no longer residing at the Fleur Drive address, had not updated his address with IWD, and had not communicated a forwarding address to the USPS. Ms. Gonzalez discarded the correspondence. The claimant did not file an appeal from the decision by the March 11, 2022 deadline for at any date prior to February 10, 2024.

On April 27, 2022, IWD Benefits Bureau mailed three disqualifications decision to the claimant at the Fleur Drive address of record. By that date, the no contact order was in place. By that time, the USPS had commenced deflecting the claimant's mail from the Fleur Drive address and would not have delivered the decisions to the Fleur Drive address. The claimant had not updated his address with IWD and had not communicated a forwarding address to the USPS. The reference 08 decision denied benefits for the week ending March 12, 2022. The reference 09 decision denied benefits for the week ending March 19, 2022. The reference 10 decision denied benefits for the week ending March 26, 2022. Each of the decisions indicated the denial of benefits was based on the claimant's failure to meet the reemployment activities requirements for the week in question and on the earlier work search warning. Each decision stated that the decision would become final unless an appeal was postmarked or received by the Appeal Section by May 7, 2022. Each decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, then the deadline would be extended to the next working day. May 7, 2022 was a Saturday and the next working day was Monday, May 9, 2022. The weight of the evidence indicates that IWD mailed the decisions in a timely manner, the USPS processed the mail in a timely manner, but that the decisions could not be delivered to the claimant in light of the claimant not providing a mail forwarding address. The claimant did not appeal any of the three decisions by the May 9, 2022 extended appeal deadline.

On April 29, 2022, IWD Benefits Bureau mailed three overpayment decisions to the claimant at the Fleur Drive last-known address of record. The overpayment decisions each indicated they were based on one of the April 27, 2022 disqualification decisions. The reference 11 decision held the claimant was overpaid \$521.00 for the week ending March 12, 2022. The reference 12 decision held the claimant was overpaid \$521.00 for the week ending March 19, 2022. The reference 13 decision held the claimant was overpaid \$521.00 for the week ending March 26, 2022. Each overpayment decision stated that the decision would become final unless an appeal was postmarked or received by the Appeal Section by May 9, 2022. The weight of the evidence indicates that IWD mailed the decisions in a timely manner, the USPS processed the mail in a timely manner, but that the decisions could not be delivered to the claimant in light of the claimant not providing a mail forwarding address. The claimant did not appeal any of the three overpayment decisions by the May 9, 2022 appeal deadline.

The claimant thereafter attempted to establish a second benefit year effective August 14, 2022. At that time, the claimant provided the Cascade Avenue, West Des Moines mailing address. IWD denied benefits in connection with the second benefit year.

The claimant recently established a new benefit year that was effective December 24, 2023 and promptly commenced making weekly claims. IWD approved benefits, but withheld and offset benefits for the weeks ending December 30, 2023 through January 27, 2024 to recover the prior overpayment. IWD also withheld a portion of the approved benefits for the week ending February 3, 2024, to complete recovery of the overpaid benefits. In other words, from the time the claim was filed, there was a four to five-week period during the claimant was making weekly claims but was not receiving benefits.

On or about February 10, 2024, the claimant final inquired with IWD regarding why he had not been receiving benefits. On February 10, 2024, the claimant completed and transmitted an online appeal. In the appeal, the claimant referenced the overpayment decisions pertaining to March 2022. The Appeals Bureau received the Appeal on February 10, 2024 and treated it as a late appeal from each the reference 07 through 13 (o.c. 8/15/21) decisions.

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 87124.35(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 87124.35(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 87124.35(2)(c).

The evidence in the record establishes an untimely appeal from the decision. The evidence establishes that the claimant engaged in conduct that rendered him unavailable to receive the decision. Any delay in receipt of, knowledge of, or response to the decision was attributable to the claimant criminal conduct, failure to provide IWD with an updated mailing address prior to August 14, 2022, and failure to complete a mail forwarding request with the USPS. The claimant unreasonably delayed filing the appeal to February 10, 2024. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 87124.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the appellant appeals in the present matter. 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 April 27, 2022 (reference 09) decision that denied benefits for the week that ended March 19, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement during that week and had earlier been warned about the requirement, remains in effect.



James E. Timberland
Administrative Law Judge

March 11, 2024
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.