

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

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**QUEEN D BROWN**

Claimant

**CASEYS MARKETING COMPANY**

Employer

**APPEAL 22A-UI-13065-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/26/21**

**Claimant: Appellant (3R)**

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Iowa Code § 96.6(2) - Timely Appeal  
Iowa Code § 96.4(3) - Able and Available to Work  
Iowa Admin. Code r. 871-24.23(26) - Part-Time Same Hours, Wages  
Iowa Code § 96.1A(37) - Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) - Same Base Period Employment

**STATEMENT OF THE CASE:**

On May 25, 2022, Queen Brown, claimant/appellant, filed an appeal from the April 4, 2022, (reference 04) unemployment insurance decision that denied benefits as of 03/27/22 due to her still being employed in her job at the same hours and wages. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 15, 2022, at 11:05AM. The department did not participate. Claimant personally participated, along with her witness, Daisha Vanphent, claimant's roommate, and former co-worker. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-13064-DH-T; 22A-UI-13065-DH-T; and 22A-UI-13066-DH-T. Judicial notice was taken of the administrative record, including DBRO.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Is the claimant totally, partially, or temporarily unemployed?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated May 25, 2022. To be timely, the appeal needed to be filed on or before 04/14/22. The decision was mailed to claimant's last known addresses on 04/04/22, which is the same address she currently uses. Claimant did not receive this decision. She did receive the decision in appeal 22A-UI-13064-DH-T, which was found to be timely appealed.

Claimant was employed by Casey's Marketing Company as a part-time cashier, guaranteed 20-60 hours per each two-week schedule. Claimant and Ms. Vanphent testified that claimant was discharged on March 18, 2022. Claimant was told by her supervisor, Sarah, that if she was not going to listen and do as she was instructed while working in the kitchen, that she needed to go run the cash register. Claimant went to the cash register and Sarah followed. Claimant "snapped" and got into a heated argument with her supervisor, telling Sarah she does not do anything, she was worthless as a supervisor, and numerous other things. After the heated exchange and what can best be called a rant by claimant against her supervisor, claimant was discharged.

The notice of hearing does not list Iowa Code Section 96.5(2) Discharge for Misconduct, as one of the issues in this appeal. The employer not being present, the undersigned could not ask both parties whether they would waive that defect in the notice of hearing to fully address the issue and rule on the issue.

With claimant advising she was discharged as of March 18, 2022 (since it was a Friday with trucks to unload) claimant would not be employed as of March 27, 2022.

The record (DBRO) reflects that claimant's weekly benefit amount is \$87 and it shows claimant was last paid wages by employer on 03/18/22. Therefore, there were no wages on or after 03/27/22. The record reflects that claimant did not file a claim for unemployment benefits after the benefit week ending 02/19/22 and therefore no benefits were paid to claimant on or after 03/27/22.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant was found to have timely appealed the decision in appeal 22A-UI-13064-DH-T, which was the first notice of disqualification and therefore this appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at the same hours and wages due to a discharge and therefore claimant was totally unemployed. The issue of whether employer's account is subject to charge is moot since claimant did not file a claim for unemployment benefits after the benefit week ending 02/19/22, therefore no benefits were paid to claimant for any benefit week after 02/19/22 which is prior to 03/27/22.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a

reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.1A(37) provides:

“Total and partial unemployment”.

a. An individual shall be deemed “totally unemployed” in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed “partially unemployed” in any week in which either of the following apply:

(1) While employed at the individual’s then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual’s weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual’s regular job, earns at odd jobs less than the individual’s weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed “temporarily unemployed” if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual’s regular job or trade in which the individual worked full-time and will again work full-time, if the individual’s employment, although temporarily suspended, has not been terminated

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual’s base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Claimant was discharged from work on 03/18/22, making her fully unemployed and not returning to work. Because claimant did not file a claim for unemployment benefits after the benefit week ending 02/19/22 and therefore no benefits were paid to claimant for any benefit week after 02/19/22, the issue of whether benefits paid should be charged against the account of the employer is moot as no benefits were paid. As to whether claimant is or is not eligible for benefits on or after 03/27/22 or after 03/18/22 is moot since no claim for unemployment benefits was

submitted after the benefit week ending 02/19/22 and therefore no benefits were paid to claimant for any benefit week after 02/19/22.

**DECISION:**

The April 4, 2022, (reference 04) unemployment insurance decision denying benefits as of March 27, 2022, is **MODIFIED IN FAVOR OF RESPONDENT**. Because claimant did not file a claim for unemployment benefits after the benefit week ending 02/19/22, and as such no benefits were paid to claimant for any benefit week after 02/19/22 which is prior to 03/27/22; the issues of denying benefits as of March 27, 2022, and whether the employer shall be liable for benefit charges is moot. Claimant is totally unemployed as of 03/18/22.

**REMAND:**

This matter is remanded to the Benefits Bureau for interview/investigation and a decision with appeal rights on the issue of claimant's separation from employment in March 2022, and any other issue as determined by the Benefits Bureau in light of the information set forth in this decision.



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Darrin T. Hamilton  
Administrative Law Judge

September 16, 2022  
Decision Dated and Mailed

dh/mh

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.