

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

BEAU N HENRY
Claimant

APPEAL 23A-UI-03796-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/25/22
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.2(1)(e) – Able & Available – Report as Directed by Department
Iowa Admin. Code r. 871-24.3 – Able & Available – Identity Verification
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

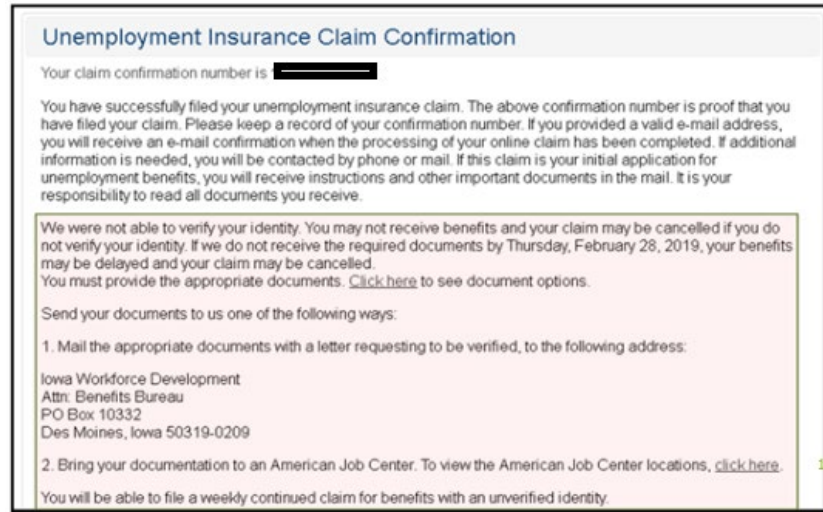
On April 12, 2023, claimant Beau N. Lincoln filed an appeal from the March 30, 2023 (reference 01) unemployment insurance decision that allowed benefits effective March 26, 2023, but denied benefits prior to that date, based on a determination that claimant initially failed to provide identity verification documents but subsequently provided them. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Thursday, April 27, 2023. Claimant Beau N. Lincoln participated. Iowa Workforce Development submitted a written statement and exhibits in lieu of in-person participation. IWD Exhibits 1 through 6 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?
Did the claimant timely provide verification of his identity?
Did the claimant fail to report as directed by a department representative?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits effective December 25, 2022, and then he filed an additional claim for unemployment insurance benefits effective March 5, 2023. When filing his additional claim, claimant was unable to verify his identity through the online verification process. Therefore, on the claim confirmation page, a notice appeared stating claimant was required to provide qualifying proof of identity to the agency by March 20, 2023, in order to prevent benefits from being delayed and the claim from being canceled. The notification would have looked similar to the graphic below:

A screenshot of a web page titled "Unemployment Insurance Claim Confirmation". The page has a light blue header with the title. Below the header, it says "Your claim confirmation number is" followed by a blacked-out box. The main text explains that the claimant has successfully filed their claim and provides instructions on how to verify their identity. A pink box highlights a warning: "We were not able to verify your identity. You may not receive benefits and your claim may be cancelled if you do not verify your identity. If we do not receive the required documents by Thursday, February 28, 2019, your benefits may be delayed and your claim may be cancelled. You must provide the appropriate documents. Click here to see document options." Below this, it lists two ways to send documents: 1. Mail to Iowa Workforce Development, Attn: Benefits Bureau, PO Box 10332, Des Moines, Iowa 50319-0209. 2. Bring documentation to an American Job Center. A link "click here" is provided for job center locations. At the bottom, it states "You will be able to file a weekly continued claim for benefits with an unverified identity." There is a small "12" in the bottom right corner of the pink box.

The only difference between the graphic above and the message claimant would have received is that claimant would have had until March 20, 2023, to provide the required documents.

Additionally, on March 12, 2023, the agency mailed claimant a letter also stating that if claimant was unable to provide proof of identity by March 20, 2023, "benefits may be delayed and ... claim may be canceled." (IWD Exhibit 2)

Claimant did not provide proof of identity until on or about March 28, 2023. The claimant's unemployment insurance claim was unlocked at that time. The same day, the agency issued a decision finding claimant eligible for benefits effective March 26, 2023, as the requested identity verification documents were provided.

Claimant did not learn that his claim was locked for failure to verify his identity until he went online to check the status of his claim on or about March 28, 2023. He does not recall failing to answer the verification questions correctly when filing his claim or receiving the message on his claim confirmation screen. Claimant did not receive IWD's letter in the mail. As soon as he learned his claim was locked, he uploaded his identity verification documents so IWD would unlock his claim.

Claimant filed for benefits for the weeks ending March 11, 2023; and March 18, 2023; due to a two-week layoff at work. He had returned to work the following week and worked his full-time schedule. However, claimant filed a weekly continued claim that week to keep his claim open, in case he was laid off again the following week. Claimant filed a claim for benefits that week and reported \$500.00 in gross wages.

The unemployment insurance decision was mailed to the claimant's address of record on March 30, 2023. The claimant received the decision on April 8 or April 9, 2023. He contacted IWD upon receiving the decision, and IWD explained the decision meant he would not receive the benefits he had filed for in March 2023. Claimant then promptly filed his appeal on April 12, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant had no notice of his need to verify his identity. Benefits will be granted effective March 5, 2023.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is. Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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).

Here, the claimant believed the decision meant he would receive all of the benefits he had filed for and promptly called IWD to verify this was correct. He appealed the decision immediately upon learning that he had misunderstood the decision he received. Claimant's appeal shall be accepted as timely.

The next issue is whether claimant is able to and available for work and whether he has reported and verified his identity with Iowa Workforce Development. 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...

Iowa Admin. Code r. 871-24.3 provides:

A claim will not become valid until the identity of the claimant has been verified by the department.

(1) Upon the filing of a claim, notification shall be provided to the claimant if the claimant's identity was not verified.

(2) If the agency is unable to verify the claimant's identity in the claim application, the claimant must provide approved documents. Approved documents must include at least one document containing a social security number. The department shall determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

(3) The claimant's identity will not be considered verified until approved documents have been provided. The claim shall remain locked from issuance of benefits until the claimant has provided the approved documents to verify identity.

(4) After filing a claim application, the claimant shall not be eligible for benefits for any week until approved documents are provided to verify identity.

(5) Approved documents must be provided or postmarked by Saturday at 11:59 p.m. of the week in which the approved documentation is due, and the claim shall be unlocked for all weeks following the most recent effective date of the claim application.

(6) If required documents are provided in any subsequent weeks following the due date, the claimant shall be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

Iowa Admin. Code r. 871-24.23(11) provides:

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

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

In this case, Iowa Workforce Development notified claimant that identity verification needed to be provided by March 20, 2023, in order to prevent benefits from delayed or the claim being cancelled. However, claimant did not receive that notice and provided credible testimony that he was not aware he needed to submit identity verification documents until he went online to check the status of his claim. His failure to meet the agency's deadline, while perhaps not the

fault of IWD, was likely attributable to the U.S. Postal Service, a force beyond claimant's control. As soon as claimant learned IWD required his identity verification documents, he submitted them. The administrative law judge finds in claimant's favor; benefits are allowed effective March 5, 2023.

The remaining issue, however, is claimant's ability to and availability for work the week of March 19 through March 25.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

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

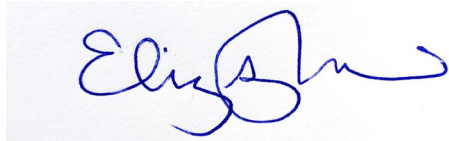
(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Here, the claimant admits that during the week of March 19, he had returned to work. He was working his full-time schedule that week, and he only filed a claim for benefits to preserve his open claim in the event that he was laid off the following week. Because claimant was working full-time, the administrative law judge finds claimant was not available for work the week of March 19 through March 25, 2023, and benefits are denied that week.

DECISION:

The March 30, 2023 (reference 01) unemployment insurance decision is modified in favor of the claimant/appellant. Claimant is able to and available for work effective March 5, 2023, through the week ending March 18, 2023. He has provided his identity verification documents. Benefits for those two weeks shall be paid.

Claimant was working full time and was not available for work the week ending March 25, 2023. Benefits are denied for that week.



Elizabeth A. Johnson
Administrative Law Judge

April 28, 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> 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 adquiriera 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.