

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

MICHAEL J LAGRANGE
Claimant

APPEAL 24A-UI-02451-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/07/24
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(11) – Able & Available – Failure to Report
Iowa Admin. Code r. 871-24.2(1)(e) – Able & Available – Report as Directed by Department
Iowa Admin. Code r. 871-24.3(2) – Able & Available – Identity Verification

STATEMENT OF THE CASE:

On February 29, 2024, claimant Michael J. Lagrange filed an appeal from the February 14, 2024 (reference 01) unemployment insurance decision that allowed benefits effective February 19, 2024, based upon a determination that claimant initially failed to provide verification of identity but subsequently did so. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Thursday, March 28, 2024. Appeal numbers 24A-UI-02451-LJ-T and 24A-UI-02452-LJ-T were heard together and created one record. Claimant Michael LaGrange participated. Iowa Workforce Development participated through documentation prepared by Investigator Debbie Rumbaugh. IWD Exhibits 1-1 through 6-1 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant was able to and available for work.
Whether claimant failed to report as directed by a department representative.
Whether claimant timely provided verification of identity.

FINDINGS OF FACT:

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

Claimant initially opened a claim for unemployment insurance benefits on January 8, 2024, establishing his claim effective January 7. Claimant was unable to verify his identity through the online verification process. Therefore, on his claim confirmation page, a notice would have appeared stating claimant was required to provide qualifying proof of his identity to the agency in order to prevent his benefits from being delayed and his claim from being canceled. Claimant does not remember seeing this notice on the screen.

On January 9, 2024, IWD mailed claimant a letter also stating that if he was unable to provide proof of his identity by January 15, 2024, “benefits may be delayed or denied.” Claimant received the letter on Saturday, January 13. Because the local office was closed on January 15 for the observance of Dr. Martin Luther King Day, claimant could not bring in his identity documentation until Tuesday, January 16. Claimant brought proof of identity on January 16, presenting both his driver’s license and social security card to the Davenport local office. Claimant worked with staff member Marcus that day.

IWD did not ultimately process claimant’s documentation until weeks later, after claimant provided the documents – and Marcus uploaded and sent the documents – multiple additional times. On January 23, claimant came to the Davenport office to file his weekly continued claim for benefits. He spoke with Marcus, who looked on the computer and determined he needed to resubmit claimant’s identity documentation. Marcus took claimant’s license and social security card, scanned them into his computer, and sent the images to IWD. The documents were received by IWD on February 9, based on documentation from IWD. (IWD Exhibits Cover Page) Claimant’s unemployment insurance claim was unlocked on February 13. On February 14, 2024, IWD issued two decisions: one (reference 01) finding claimant eligible for benefits effective February 19, 2024, as he provided the requested identity verification documents; the other (reference 02) finding claimant eligible for benefits effective February 18, 2024, as he provided the requested identity verification documents.

Two unemployment insurance decisions were mailed to claimant’s address of record on February 14, 2024. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 24, 2024. Claimant received one or both decisions on February 18, 2024. He went to the Davenport local office on February 20, 2024, to seek assistance. Local office staff told him it was “his problem.” No one mentioned that he could appeal the decisions if he disagreed with them or assisted him with the appeal process that day. Claimant came back to the office the following week, on February 29. That day, he worked with Marcus and Marcus helped him file an appeal. Claimant filed his appeal via fax on February 29, and that appeal was applied to both decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant provided timely verification of identity.

The first issue to address is whether claimant filed a timely appeal. 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(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 parties have a duty to appeal representatives' decisions within the time allotted by statute; 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, claimant received one or both February 14 decisions and promptly brought them to the Davenport local office. However, he did not receive any reasonable assistance. No one explained that he had appeal rights to the decision or offered to bring up the online appeal form or provide a paper appeal form. They simply told claimant it was "his problem." I find claimant's delay in filing the appeal was due to agency error. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant provided timely verification of his identity. Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. 871 IAC 24.23(11).

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.

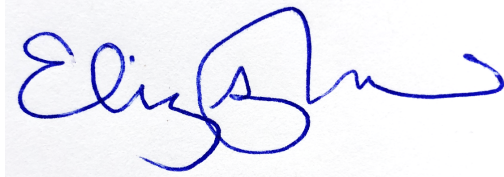
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find claimant credibly recounted the timeline of his interactions with IWD, from the day he filed his claim forward. I question the agency's decision not to unlock claimant's claim until the week of February 18, 2024, when the investigator's own cover letter indicates claimant provided the documentation on February 9. I did not rely on the investigator's documentation to establish the facts of the case.

In this case, claimant promptly responded to the notification he received to provide his identity documentation to IWD. It is not clear why IWD failed to process his documentation in a timely manner, but the agency's failure to timely address the issue was not within claimant's control. Claimant was in the local office and interacting with local office staff each week, and he credibly testified that his work with Marcus kept him apprised of his rights and responsibilities. Benefits are allowed effective January 7, 2024, provided claimant is otherwise eligible.

DECISION:

The February 14, 2024 (reference 01) unemployment insurance decision is modified in favor of claimant/appellant. Claimant is able to and available for work effective January 7, 2024. Benefits are allowed effective January 7, 2024, provided claimant is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

March 29, 2024
Decision Dated and Mailed

LJ/jkb

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:

**Iowa Employment Appeal Board
6200 Park Avenue 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> 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.