

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

TERRI L VAN GUNDY

Claimant

APPEAL 22A-UI-14348-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER

Employer

OC: 04/26/20

Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timeliness of Appeal

Iowa Code § 96.4(3) - Able and Available to Work

Iowa Admin. Code r. Code r. 871-24.23(1) - Eligibility - A&A - Illness

Iowa Admin. Code r. Code r. 871-24.23(29) - Eligibility - A&A - Major Portion of Work Week

STATEMENT OF THE CASE:

On June 23, 2022, Ms. Terri Van Gundy, claimant/appellant, appealed from the July 9, 2020, (reference 01) unemployment insurance decision that denied benefits as of 04/26/20 due to illness. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for August 4, 2022, at 2:00PM. Employer, Broadlawns Medical Center, participated through Ms. Shelly Farrell, human resources coordinator. Claimant personally participated. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-14348-DH-T; 22A-UI-14349-DH-T; 22A-UI-14350-DH-T; and 22A-UI-14351-DH-T. Judicial notice was taken of the administrative record. Employer's exhibit R-1 was admitted without objection. The record was kept open at the end of the hearing until 9:00AM August 8, 2022, with no objection. Claimant wanted to submit a copy of a document they assert showed a 07/13/20 confirmation of her appeal to this matter. Employer wanted to submit documentation such as payroll records or pay stubs to establish dates claimant was out sick, dates claimant worked, hours worked and whether the work was from home or in the office. The parties shared their email addresses and were given the appeals email address and the case number to reference in their email and were instructed to include each other in the email. Neither party utilized their requested opportunity to submit anything.

ISSUES:

Is claimant's appeal timely?

Is claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant's appeal is dated 06/23/22. To be timely, the appeal needed to be filed on or before 07/20/20, the first nonholiday weekday ten days after the mailing date. The decision was mailed to claimant's last known addresses on 07/09/20. Claimant stated she does not remember whether

she got the decision or not as she has received so much communication from Iowa Workforce Development (IWD) over the past two years. Claimant asserts she was in communication with IWD about being denied benefits and asserts she filed an appeal, receiving a 07/13/20 confirmation of her appeal. There is no record of claimant submitting an appeal in this matter, other than the 06/23/22 appeal. The record was kept open from the hearing date of 08/04/22, until 9am, 08/08/22, in part to allow claimant time to email a copy of the reputed appeal confirmation document. Claimant did not submit the document she alleged to possess.

There is a 06/23/22 appeal. With claimant failing to submit the alleged document, there is no proof of a 07/13/20 appeal. Claimant had communication about this decision with IWD on and just prior to 07/13/20 but whatever documents were exchanged, there was no appeal and no appeal confirmation.

Claimant was sick with COVID-19 on two occasions in April through July 2020. Claimant initially was too sick to work and missed all work. Toward the end of the time, she would be able to perform some work, but never more than four hours in any given day and never for the majority of the work week. It is found that claimant was too sick to perform any work from April 26, 2020, through June 6, 2020. Claimant failed to work the major portion of the work week due to being too sick to work from June 7, 2020, through July 4, 2020. This made claimant not able and available to work from April 26, 2020, through July 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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.

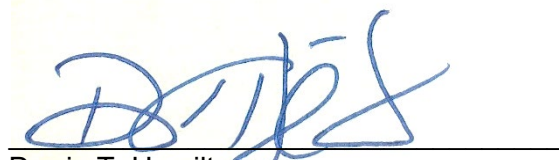
The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 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 have an opportunity to appeal the fact-finder's decision because the decision was received on or just prior to July 13, 2020. The decision was mailed to claimant's last known address on July 9, 2020. The deadline to appeal was July 20, 2020. Appellant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. Claimant's appeal dated 06/23/22 is not filed on time. The administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

The July 9, 2020, (reference 01) unemployment insurance decision that denied benefits as of 04/26/20 due to illness, remains in effect as the appeal is untimely and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

December 5, 2022
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 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.