

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

LAKIESHA PERRY-SMITH
Claimant

APPEAL 23A-UI-03513-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/11/22
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Lakiesha Perry-Smith, the claimant/appellant,¹ filed an appeal from the Iowa Workforce Development December 28, 2022 (reference 02) unemployment insurance (UI) decision. The decision warned Ms. Perry-Smith to engage in at least four reemployment activities, including at least three job applications each week, and keep a record but did not deny her REGULAR (state) UI benefits. The Iowa Department of Inspections and Appeals (DIA) UI Appeals Bureau mailed a notice of hearing to Ms. Perry-Smith. The undersigned administrative law judge held a telephone hearing on April 18, 2023. The undersigned heard Appeals 23A-UI-03513-DZ-T, 23A-UI-03514-DZ-T, 23A-UI-03515-DZ-T, 23A-UI-03516-DZ-T, 23A-UI-03517-DZ-T, 23A-UI-03518-DZ-T, 23A-UI-03519-DZ-T, 23A-UI-03520-DZ-T, 23A-UI-03521-DZ-T and 23A-UI-03522-DZ-T together and created one hearing record. Ms. Perry-Smith participated personally. The undersigned took official notice of the administrative record.

ISSUES:

Did Ms. Perry-Smith file her appeal on time?
Is the work search warning appropriate?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the December 28, 2022, (reference 02) UI decision to Ms. Perry-Smith at the correct address on December 28, 2022. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Saturday, January 7, 2023. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, January 9, 2023.

Ms. Perry-Smith agrees that the decision was mailed to her correct address but she did not receive this decision in the mail. In January 2023, Ms. Perry-Smith began having issues receiving mail. Members of Ms. Perry-Smith's household have received mail in the last few days from January 2023.

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

On February 3, 2023, IWD mailed Ms. Perry-Smith another UI decision. The reference 03 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits as of January 29, 2023 because IWD concluded that it had mailed Ms. Perry-Smith a notice to report for a reemployment and eligibility assessment but she did not do so. Ms. Perry-Smith received this decision in the mail. Ms. Perry-Smith appealed this decision, and an appeal hearing was scheduled for February 28, 2023. On February 20, 2023, IWD mailed Ms. Perry-Smith another UI decision. The reference 04 UI decision allowed Ms. Perry-Smith REGULAR (state) UI benefits as of January 29, 2023 because IWD concluded that she had since participated in the reemployment and eligibility assessment. Ms. Perry-Smith received this decision in the mail. The administrative law judge's March 1, 2023 decision in Appeal 23A-UI-01230-PT-T dismissed Ms. Perry-Smith's appeal as moot. An issue or case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent."² That means an issue or case is moot if the issue or case has been resolved and there is nothing left to be decided in an appeal. That meant the February 20, 2023 (reference 04) UI decision that allowed Ms. Perry-Smith REGULAR (state) UI benefits as of January 29, 2023 stayed in place.

On March 24, 2023, IWD mailed Ms. Perry-Smith nine more UI decisions.

- The reference 05 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of January 8-14, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 06 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of January 15-21, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 07 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of January 22-28, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 08 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of January 19, 2023 through February 4, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 09 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of February 5-11, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 10 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of February 12-18, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 11 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of February 19-25 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.
- The reference 12 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of February 26, 2023 through March 4, 2023 because IWD concluded that she

² *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.

- The reference 13 UI decision denied Ms. Perry-Smith REGULAR (state) UI benefits for the week of March 5-11, 2023 because IWD concluded that she did not meet the reemployment activities requirement for this week after IWD had warned her about the requirement.

The appeal deadline in each of the nine decisions was April 3, 2023. Ms. Perry-Smith received the nine decisions. Ms. Perry-Smith filed an appeal online on April 3, 2023. Ms. Perry-Smith listed reference numbers 05, 06, 07, 08, 09, 10, 11, 12, and 13 as the reference numbers that wanted to appeal. The appeal was received on April 3, 2023. The DIA UI Appeals Bureau set up appeals for reference numbers 02, 05, 06, 07, 08, 09, 10, 11, 12, and 13.

The undersigned further finds: Ms. Perry-Smith filed her initial UI claim effective December 11, 2022. She filed a weekly claim for the week of December 18-24, 2022. Ms. Perry-Smith did not apply to any jobs this week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Perry-Smith filed her appeal of the December 28, 2022 (reference 02) UI decision on time.

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:

2. 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:

- (2) 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.³ Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.⁴

Ms. Perry-Smith did not receive the December 28, 2022 (reference 02) UI decision before the appeal deadline and, therefore, could not have filed an appeal by the deadline. The notice provision of the decision was invalid. Ms. Perry-Smith's delay in filing her appeal was due to delay or other action of the United States Postal Service. Ms. Perry-Smith filed her appeal when she received the nine decisions and found out that there was an issue related to work searches. Ms. Perry-Smith's filed her appeal on time.

The undersigned further concludes Ms. Perry-Smith did not make an active and earnest search for work the week of December 18-24, 2022.

Iowa Code § 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(28) provides:

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

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

Iowa law and administrative rules require Ms. Perry-Smith to actively and earnestly search for work each week she claims UI benefits to be eligible for benefits. Ms. Perry-Smith did not do that for the week of December 18-24, 2022. Therefore, the warning was appropriate.

³ *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

⁴ *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).

DECISION:

Ms. Perry-Smith filed her appeal of the December 28, 2022 (reference 02) UI decision on time. The December 28, 2022, (reference 02) UI decision is AFFIRMED. Ms. Perry-Smith did not make an active and earnest search for work the week of December 18-24, 2022. The warning was appropriate.



Daniel Zeno
Administrative Law Judge

April 20, 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.