

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

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**ERIC D PEARSON**

Claimant

**APPEAL 22A-UI-13359-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT  
REEMPLOYMENT SERVICES**

**OC: 12/12/21  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Able and Available/Work Search  
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work  
Iowa Code § 96.6(2) – Timely Appeal  
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment

**STATEMENT OF THE CASE:**

Eric D Pearson, the claimant/appellant, filed an appeal from the Iowa Workforce Development's (IWD) May 20, 2022 (reference 04) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits for the week of May 1-7, 2022 because IWD records indicated that Mr. Pearson did not meet the reemployment activities requirement that week after being warned. The parties were properly notified about the hearing. A telephone hearing was held on July 29, 2022. Mr. Pearson participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is Mr. Pearson's appeal filed on time?

Is Mr. Pearson able to and available for work?

Did Mr. Pearson meet the reemployment activities requirement for the week of May 1-7, 2022?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Pearson at the correct address on May 20, 2022. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by May 30, 2022. IWD had mailed the decision to the correct address and Mr. Pearson was not aware of any issues receiving his mail at that time, but he did not receive the decision in the mail.

IWD mailed Mr. Pearson another UI decision on May 20, 2022 (reference 06) that denied UI benefits as of May 15, 2022 because IWD records indicated that IWD had mailed Mr. Pearson a notice to report for an appointment, but he did not report for the appointment. Mr. Pearson did not receive that decision in the mail. On May 25, 2022, IWD mailed Mr. Pearson another UI decision. The decision, reference 07, concluded that Mr. Pearson was overpaid REGULAR

(state) UI benefits in the amount of \$470.00 for the week of May 1-7, 2022. On May 27, 2022, IWD mailed Mr. Pearson another UI decision. The decision, reference 05, denied UI benefits for the week of May 8-14, 2022 because IWD records indicated that Mr. Pearson did not meet the reemployment activities requirement that week after being warned.

Mr. Pearson received the May 25, 2022 (reference 07) overpayment decision on, or about, June 1, 2022. Mr. Pearson went to the IWD Cedar Rapids office and filed an appeal via fax on June 1, 2022. The appeal was received on June 1, 2022. On June 7, 2022, IWD mailed Mr. Pearson another UI decision. The decision, reference 08, concluded that Mr. Pearson was overpaid REGULAR (state) UI benefits in the amount of \$440.00 for the week of May 8-14, 2022. Based on his June 1, 2022 appeal, appeals were set up for the May 20, 2022 (reference 04), May 27, 2022 (reference 05), May 20, 2022 (reference 06), May 25 (reference 07) and June 7, 2022 (reference 08) UI decisions.

The administrative further finds: Mr. Pearson returned to his regular job after a seasonal layoff the week of May 1-7, 2022. The employer pays Mr. Pearson \$30.00 per hour, and he worked just over five hours that week. An IWD representative had told Mr. Pearson that he did not have to do work searches for any week in which he worked any hours that week. Since Mr. Pearson worked the week of May 1-7, 2022, he did not do any work searches or engage in any reemployment activities that week. Mr. Pearson's weekly UI benefit amount is \$504.00.

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

For the reasons that follow, the administrative law judge concludes Mr. Pearson's appeal of the May 20, 2022, (reference 04) UI decision was filed 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. *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).

Mr. Pearson did not receive the May 20, 2022 UI decision by the May 30, 2022 deadline and, therefore, could not have filed an appeal by the appeal deadline. The notice provision of the decision was invalid. Mr. Pearson filed an appeal within ten days of when received the May 25, 2022 (reference 07) overpayment decision and learned that there was an issue with his claim. Mr. Pearson's appeal was filed on time.

The administrative law judge further concludes as follows:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code § 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.

In this case, Mr. Pearson worked less than his usual work week the week of May 1-7, 2022 and he had earned less than his weekly UI benefit amount plus \$15.00. Mr. Pearson is partially unemployed for the week of May 1-7, 2022. Since Mr. Pearson is partially unemployed that week, the requirement that he seek work that week is waived, and benefits are allowed the week of May 1-7, 2022.

**DECISION:**

Mr. Pearson's appeal of the May 20, 2022 (reference 04) UI decision was filed on time. The May 20, 2022 (reference 04) UI decision is REVERSED. Mr. Pearson is partially unemployed the week of May 1-7, 2022. Benefits are allowed for the week of May 1-7, 2022.



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Daniel Zeno  
Administrative Law Judge

September 21, 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  
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.