

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

CHELSSY VEATCH
Claimant

APPEAL 22A-UI-13657-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/20/22
Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

June 7, 2022, Ms. Chelssy Veatch, claimant/appellant, filed an appeal from the May 5, 2022, (reference 02) unemployment insurance decision that found claimant not eligible to receive unemployment benefits from May 1-7, 2022, as records indicate claimant was not available to work due to illness. After proper notice was sent to claimant, a telephone hearing was conducted on July 22, 2022, at 2:00PM. Claimant participated personally. The department did not participate. Judicial notice was taken of the administrative record which included the appeal and the department's fact-finding documents.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and considered the evidence and record, the undersigned finds:

The above decision was mailed to the claimant/appellant's last known address of record on 05/05/2022. To be timely, an appeal needed to be filed on or before 05/16/22, the first nonholiday weekday ten days after the mailing date. The first knowledge she had of the matter was May 31, 2022, at the earliest and June 4, 2022, when she called Iowa Workforce Development (IWD) to ask why she had stopped receiving benefits. Claimant received the decision either June 4 or 6, 2022, which was after making the phone call. Claimant submitted her appeal June 7, 2022, which would be at most seven days after becoming aware of the issue.

Claimant filed a claim for unemployment benefits with an original claim date of 03/20/22. She had a weekly benefit amount of \$469.00. During a May 3, 2022, telephone conversation with IWD, the issue of claimant being able and available came up regarding claimant having a baby and a release from the doctor. Claimant asserted she was released to return to work 05/03/22, but IWD found she had not provided proof of release, even though the fact-finding documents had a copy of a note from a doctor dated 05/05/22 advising claimant was seen on 05/03/22 and cleared to return to work. The decision denied benefits for one week, May 1-7, 2022, due to illness.

Claimant was not employed in May of 2022, and this is a denial for failing to submit proof of her ability to work. Claimant was not otherwise sick, hospitalized, or otherwise not able to work, is she had work for the week of May 1-7, 2022.

Claimant submitted claims for benefits for a 6-week period beginning March 20, 2022, through April 30, 2022. Claimant did not submit any claims for benefits beginning May 1, 2022, through May 14, 2022. Claimant did submit claims for benefits for a 3-week period beginning May 15, 2022, through June 4, 2022, to which she was denied as not able and available to work. The undersigned sees no decision disqualifying claimant for benefits for this 3-week period, and the only able and available denial decision covers just the one week of May 1-7, 2022.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 not have an opportunity to appeal the fact-finder's decision because the decision was not received until June 4th or 6th, 2022. Prior to that, claimant became aware of the issue somewhere between May 31 through June 3, when she called IWD to inquire why she had stopped receiving benefits. Without notice of the decision, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Upon learning of the issue, claimant submitted her appeal 4-7 days later, on 06/07/22. By submitting her appeal within ten days of becoming aware of the disqualification decision, the appeal shall be accepted as timely.

The next issue is whether claimant was able and available to work May 1-7, 2022. For the reasons set forth below, the above decision is reversed.

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. 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".

IWD wanted proof that claimant was medically cleared for work regarding May 1-7, 2022. Claimant has provided proof that she was medically cleared to work May 1-7, 2022. Claimant was not sick, hospitalized or otherwise not able and available for work for May 1-7, 2022. Claimant is eligible for benefits, so long as she otherwise meets all other eligibility requirements. However, with claimant not submitting for benefits for May 1-7, 2022, there are not benefits to be paid out for the week in question.

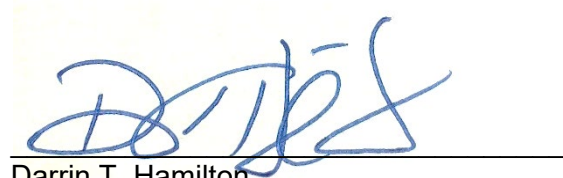
The matter is remanded for the benefits to review why no benefits were paid out for the 3-week period beginning May 15, 2022, through June 4, 2022, to which claimant was denied as not able and available to work, but there is not decision on file to that effect.

DECISION:

The May 5, 2022, (reference 02) unemployment insurance decision that found claimant not eligible to receive unemployment benefits from May 1-7, 2022, as records indicate claimant was ill and therefore not able and available is **REVERSED**. Claimant had provided proof she was medically cleared for work as of May 3, 2022, and otherwise not unable or unavailable. Benefits are allowed, provided she is otherwise eligible.

REMAND:

This matter is remanded for the benefits to review why no benefits were paid out for the 3-week period beginning May 15, 2022, through June 4, 2022, to which claimant was denied as not able and available to work, but there are no decisions on file to that effect. The decision at hand only regarded May 1-7, 2022. The decision has been reversed. Should this decision be what was relied upon for denial of the 3-week period beginning May 15, 2022, through June 4, 2022, then benefits bureau to calculate benefit payments to claimant.



Darrin T. Hamilton
Administrative Law Judge

November 29, 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.