

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

---

**TREVOR D POPP**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 24A-UI-04809-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/21/24  
Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

Trevor D. Popp, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) May 3, 2024 (reference 08) unemployment insurance (UI) decision. IWD denied Mr. Popp REGULAR (state) UI benefits as of April 28, 2024 because IWD concluded IWD mailed him a notice for an appointment, but did not report to IWD for the appointment. On May 21, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Popp for a telephone hearing scheduled for June 4, 2024.

The administrative law judge held a telephone hearing on June 4, 2024. The administrative law judge heard Appeals 24A-UI-04808-DZ-T, 24A-UI-04809-DZ-T, and 24A-UI-04810-DZ-T together and created one hearing record. Mr. Popp participated in the hearing personally. Lisa Meyer, Mr. Popp's mother, participated as a witness for Mr. Popp. The administrative law judge admitted Department's Exhibit 1, and Claimant's Exhibit A as evidence.

The administrative law judge concludes Mr. Popp appealed on time, and he is eligible for UI benefits as of April 28, 2024, as long as no other decision denies him UI benefits.

**ISSUES:**

Did Mr. Popp appeal on time?  
Is Mr. Popp able to and available for as of April 28, 2024?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the May 3, 2024 (reference 08) UI decision to Mr. Popp at his address of record. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Monday, May 13, 2024.

Mr. Popp received the decision in the mail on, or about Friday, May 17. Mr. Popp appealed via fax on May 17, 2024. The DIAL, UI Appeals Bureau received the appeal the same day.

---

<sup>1</sup> Claimant is the person who filed for UI benefits. Appellant is the person or employer who filed the appeal.

The administrative law judge further finds: Mr. Popp applied for UI benefits effective January 21, 2024. On Saturday, May 3, 2024, Mr. Popp received a letter in the mail from IWD directing him to attend an appointment on Friday, May 2. The following Monday, Mr. Popp contacted IWD with Ms. Meyer. The IWD representative told Mr. Popp that IWD had already issued a decision.

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

For the reasons that follow, the administrative law judge concludes Mr. Popp appealed the May 3, 2024 (reference 08) UI decision on time, and he is able to and available for work as of April 28, 2024.

#### Mr. Popp Appealed on Time

Iowa Code § 96.6(2) provides, in relevant 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.<sup>2</sup>

---

<sup>2</sup> *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.<sup>3</sup>

Mr. Popp received the May 3, 2024 (reference 08) UI decision after the appeal deadline and, therefore, could not have appealed by the deadline. The notice provision of the decision was invalid. Mr. Popp appealed with a day or so after he received the decision. Mr. Popp appealed on time.

Mr. Popp is Eligible for UI Benefits as Of April 28, 2024,  
As Long as No Other Decision Denies Him UI Benefits

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 96.1A, subsection 37, paragraph "b", subparagraph (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 Admin. Code r. 871-24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

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.

---

<sup>3</sup> *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).

UI rules require a claimant to participate in reemployment services unless the claimant shows justifiable cause for not doing so, or the claimant has previously completed the training or services.<sup>4</sup> If a claimant does not participate in the services without justifiable cause, the claimant is disqualified from receipt of UI benefits until the claimant participates in the services.<sup>5</sup> Justifiable cause includes an important and significant reason that a reasonable person would consider adequate justification in view of the importance of reemployment to the claimant. Not participating in the services or not showing justifiable cause means the claimant is not available for work.<sup>6</sup>

In this case, Mr. Popp did not know about the May 2 appointment until after the appointment. So, he did not participate in the appointment. Mr. Popp's non-participation was through no fault of his. Mr. Popp is eligible for UI benefits as of April 28, 2024, as long as no other decision denies him UI benefits.

**DECISION:**

Mr. Popp appealed the May 3, 2024 (reference 08) UI decision on time. The May 3, 2024 (reference 08) is REVERSED. Mr. Popp is able to and available for work as of April 28, 2024. Mr. Popp is eligible for UI benefits as of this date, as long as no other decision denies him UI benefits.



---

Daniel Zeno  
Administrative Law Judge

---

June 5, 2024  
Decision Dated and Mailed

DZ/jkb

---

<sup>4</sup> Iowa Admin. Code r. 871-24.6(6).

<sup>5</sup> *Id.*

<sup>6</sup> Iowa Admin. Code r. 871-24.2(1)e and 871-24.23(11).

**APPEAL RIGHTS.** If you disagree with this 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 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.