

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

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**GILBERTO FIGUEROA**  
Claimant

**APPEAL 24A-UI-03178-SN-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/10/23**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4(3) - Able and Available  
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report  
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

**STATEMENT OF THE CASE:**

The claimant, Gilberto Figuero, filed a timely appeal from the November 28, 2023, (reference 06) unemployment insurance decision that denied benefits effective November 19, 2023, because of a failure to report as directed. After due notice was issued, a telephone conference hearing was set for April 16, 2024, at 11:01. This appeal was held jointly with 24A-UI-03179-SN-T.

The claimant participated. Iowa Workforce Development Department participated through Amy Holiday, a career planner. The claimant was provided a Spanish speaking interpreter to participate in his own language. Official notice of the administrative records was taken. Exhibits 1, 2, 3, D1, and D2 were received into evidence.

**ISSUES:**

Whether the claimant's appeal is timely? If the claimant's appeal is untimely, whether there are reasonable grounds for delaying the appeal period to preserve his due process rights?

Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

Is the claimant able to work and available for work the week-ending November 19, 2023?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant's last known address of record, 315 S. 1st Street in Council Bluffs, Iowa 51501, on January 24, 2024. Unbeknownst to Iowa Workforce Development Department, the claimant moved to, 3031 South 12th Avenue in Council Bluffs,

Iowa 51503, the second week of December 2023. The claimant did not forward his mail with the US Post Office. The claimant did not receive the decision until early to mid-January 2024.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 8, 2023. (Exhibit D-1) The back of the decision gives instructions to appeal by mail, email, and online through a web application. The appeal was not filed until March 22, 2024, which is after the date noticed on the disqualification decision. The claimant explained that he waited until March 22, 2024, so that his adult daughter could help him file his application through Iowa Workforce Development's web application. (Exhibit D-2) The claimant can read English well enough to understand the instructions of the decision.

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

The administrative law judge concludes the claimant's appeal is untimely. There were no circumstances outside of the claimant's control such that the appeal period should be extended to preserve his due process rights.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's allegation that he believed he filed an appeal by phone on January 17, 2024, not credible.

The claimant could not provide accurate information for nearly every other event relevant to timeliness. He claimed he received this decision around the beginning of the year in January 2024, but the mailing date on it is nearly one month later. He claimed he updated his address with Iowa Workforce Development in the middle of January 2024, but the administrative records show he did not do so until the same day he filed his appeal, nearly two months later. Furthermore, an appeal cannot be filed by phone and I do not find it credible that an agent of Iowa Workforce Development Department told him that it could.

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.

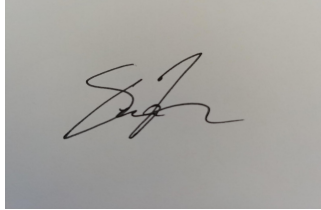
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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).

Since it is undisputed the claimant filed his appeal far after the deadline of February 3, 2023, he has the burden to show that the delay was attributable to factors outside of his control. The claimant's delay was not due to an error or misinformation from Iowa Workforce Development Department or due to delay or other action of the United States Postal Service.

No other good cause reason has been established for the delay. Rather the claimant did not update his address, which caused the receipt of the decision to be delayed. Then the claimant waited weeks after receiving the decision due to factors wholly within his control. The claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

**DECISION:**

The November 28, 2023, (reference 06) unemployment insurance decision is AFFIRMED. The appeal in this case was not timely, and the decision of the representative remains in effect.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge II

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April 18, 2024  
Decision Dated and Mailed

SMN/jkb

**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  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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.