

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

MARYANNE D MULCAHEY
Claimant

APPEAL 22A-UI-13885-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE RACING ASSOCIATION LTD
Employer

**OC: 01/16/22
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.5(5) – Other Compensation
Iowa Code § 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

Maryanne D. Mulcahey, the claimant/appellant, filed an appeal from the Iowa Workforce Development's (IWD) April 8, 2022, (reference 03) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits for the week of January 16-22, 2022 because IWD's records indicated that Ms. Mulcahey was receiving or entitled to vacation pay, paid-time-off (PTO), holiday pay severance pay or separation pay, which is considered to be wages. The parties were properly notified about the hearing. A telephone hearing was held on July 26, 2022. Ms. Mulcahey participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Ms. Mulcahey's appeal filed on time?

Was severance pay and/or vacation pay correctly deducted?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Mulcahey at the correct address on April 8, 2022. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by April 18, 2022.

IWD had mailed another UI decision to Ms. Mulcahey on April 8, 2022, (reference 04). That decision concluded that Ms. Mulcahey was overpaid REGULAR (state) UI benefits in the gross amount of \$521.00 for the week of January 16-22, 2022. Ms. Mulcahey received both decisions in the mail in late April/early May.

Ms. Mulcahey called IWD soon thereafter to explain that she had not been paid severance pay or vacation pay the week of January 16-22, 2022. The IWD representative told Ms. Mulcahey

that she could file an appeal. The representative also told Ms. Mulcahey that the representative would look into the situation but did not tell Ms. Mulcahey to wait to file an appeal. Ms. Mulcahey did not file an appeal at that time.

In late May/early June, Ms. Mulcahey received a bill from IWD telling her that she owes an overpayment. About a week later, Ms. Mulcahey filed an appeal. Ms. Mulcahey filed an appeal online on June 2, 2022. The appeal was received on June 2, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Mulcahey's appeal of the April 8, 2022, (reference 03) UI decision was not 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).

Ms. Mulcahey received the April 8, 2022, (reference 03) UI decision after the April 18, 2022 deadline and, therefore, could not have filed an appeal by the appeal deadline. The notice provision of the decision was invalid. However, when Ms. Mulcahey did receive the decision, she did not file an appeal within ten days of when she received it. Ms. Mulcahey's delay in filing her appeal was not due to an error or misinformation from the 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 in filing her appeal. Ms. Mulcahey's appeal of the April 8, 2022, (reference 03) UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Mulcahey's appeal of the April 8, 2022, (reference 03) UI decision was not filed on time. The April 8, 2022, (reference 03) UI decision is AFFIRMED.



Daniel Zeno
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division, UI Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 19, 2022
Decision Dated and Mailed

dz/kmj

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:

**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.