

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

WARM T HLAING
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 24A-UI-04714-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/03/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Warm T. Hlaing, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) April 23, 2021 (reference 03) unemployment insurance (UI) decision. IWD denied Mr. Hlaing REGULAR (state) UI benefits as of March 7, 2021 because IWD concluded he requested a leave of absence and the employer granted his request, so he was not available for work as of this date. On May 17, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Hlaing and the employer for a telephone hearing scheduled for June 3, 2024.

The administrative law judge held a telephone hearing on June 3, 2024. The administrative law judge heard Appeals 24A-UI-04712-DZ-T, 24A-UI-04713-DZ-T, 24A-UI-04714-DZ-T, 24A-UI-04715-DZ-T, and 24A-UI-04716-DZ-T together and created one hearing record. Mr. Hlaing participated in the hearing personally through a Burmese interpreter from CTS Language Link. The employer did not participate in the hearing. The administrative law judge admitted Departments Exhibits 3, and Claimant's Exhibit A as evidence.

The administrative law judge concludes Mr. Hlaing did not appeal on time, so the UI decision denying him UI benefits as of March 7, 2021 stays in place.

ISSUES:

Did Mr. Hlaing appeal on time?
Is Mr. Hlaing able to and available for work as of March 7, 2021?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the April 23, 2021 (reference 03) UI decision to Mr. Hlaing at his correct mailing address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Monday, May 3, 2021.

¹ Claimant is the person who filed for UI benefits. Appellant is the person or employer who filed the appeal.

Mr. Hlaing received the decision in the mail. Mr. Hlaing did not know what to do so he put the decision aside. Mr. Hlaing did not appeal at this time.

On July 16, 2021, IWD mailed Mr. Hlaing another UI decision. In this reference 04 decision, IWD concluded that IWD overpaid Mr. Hlaing \$4,200.00 in UI benefits because "...a decision dated 03/12/2021 that denied benefits effective 05/03/2020." The appeal deadline in this decision was Monday, July 26, 2021.

Mr. Hlaing received the decision in the mail. Mr. Hlaing did not know what to do so he put the decision aside. Mr. Hlaing did not appeal at this time.

On February 10, 2023, IWD mailed Mr. Hlaing another UI decision. In this reference 05 decision, IWD notified Mr. Hlaing that IWD is withholding his Iowa income tax refund, including a \$7.00 transfer fee from the Iowa Department of Administrative Services (DAS), to pay off an overpayment of UI benefits he owes to IWD. The appeal deadline in this decision was Monday, February 20, 2023.

Mr. Hlaing received the decision in the mail. In May 2024, Mr. Hlaing connected with EMBARC (Ethnic Minorities of Burma Advocacy and Resource Center) through a friend. EMBARC staff helped Mr. Hlaing.

Mr. Hlaing appealed online on May 15, 2024. The DIAL, UI Appeals Bureau received the appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Hlaing did not appeal the April 23, 2021 (reference 03) UI decision 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.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

Mr. Hlaing received the April 23, 2021 (reference 03) UI decision before the appeal deadline and, therefore, could have appealed by the deadline. The notice provision of the decision was valid. Mr. Hlaing's delay in appealing was not due to an error or misinformation from IWD or due to delay or other action of the United States Postal Service. Mr. Hlaing has not established any other good cause reason for his delay in appealing. Mr. Hlaing did not appeal the April 23, 2021 (reference 03) UI decision on time, so the administrative law judge does not have jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Hlaing did not appeal the April 23, 2021 (reference 03) UI decision on time. The April 23, 2021 (reference 03) UI decision that denied Mr. Hlaing REGULAR (state) UI benefits as of March 7, 2021 is AFFIRMED.



Daniel Zeno
Administrative Law Judge

June 4, 2024
Decision Dated and Mailed

rvs

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *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).

NOTE TO MR. HLANG:

- Per this decision, you are not eligible for REGULAR (state) UI benefits as of March 7, 2021 under state law. But, if you were unemployed **between February 2, 2020, and June 12, 2021** because of the COVID-19 pandemic, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. PUA benefits are federal unemployment insurance (UI) benefits.
- **You must apply for PUA benefits to see if you are eligible.**
- You may contact IWD for help applying for PUA benefits. You may also ask for a Burmese interpreter to help you when you contact IWD.
- You may apply for PUA benefits by calling IWD or going to the IWD Ottumwa office. The address and telephone number for the Ottumwa office are:

15260 Truman Street
IHCC North Campus
Ottumwa IA 52501
Telephone: 641-684-5401

- You may also apply for PUA benefits online. Here are the steps to do that:
 - First go to <https://workforce.iowa.gov/unemployment/appeals>
 - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
 - Go to the last paragraph in this section.
 - The PUA application link is at the end of the first sentence of the paragraph.
 - The reference number/authorization number is: 104712.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off your REGULAR (state) UI overpayment.**
- **If you do not apply for and are not approved for PUA, you will be required to repay the UI benefits you've received so far.**
- To check on your PUA application contact IWD by phone, email, or online.
 - Phone: 1-866-239-0843
 - Email: uiclaimshelp@iwd.iowa.gov
 - Online: Go to <https://workforce.iowa.gov/>, click on "Contact" then click on "Unemployment Help" and complete the "Unemployment Help Request" form.

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.