

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

YAHAIRA ESCALERA

Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 23A-UI-09723-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/22

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On October 9, 2023, Yahaira Escalera (claimant) filed a late appeal from the December 6, 2022, (reference 01) work search warning decision. The decision reminded the claimant that she was required to engage in four reemployment activities, including three job applications, each benefit week and warned the claimant could be disqualified for benefits for future weeks in which the claimant did not meet the work search requirement. After due notice was issued, a hearing was held on October 30, 2023. Claimant participated and presented additional testimony through Gustavo Adolpho Velazquez. Spanish-English interpreter Sergio (#16501) of CTS Language Link assisted with the hearing. There were 13 appeal numbers consolidated into one hearing: 23A-UI-09723-JT-T, 23A-UI-09724-JT-T, 23A-UI-09725-JT-T, 23A-UI-09726-JT-T, 23A-UI-09727-JT-T, 23A-UI-09728-JT-T, 23A-UI-09729-JT-T, 23A-UI-09730-JT-T, 23A-UI-09731-JT-T, 23A-UI-09732-JT-T, 23A-UI-09733-JT-T, 23A-UI-09734-JT-T, 23A-UI-09735-JT-T. Exhibit A, consisting of the online appeal form in Spanish, the English translation of the appeal form, and the appeal forwarding cover sheet, was received into evidence. The administrative law judge took official notice of the following agency administrative records: the reference 01 through 14 decisions, NMRO and KFFV.

The claimant elected to terminate her participation in the appeal hearing after the evidentiary record concerning timeliness of appeal closed and while the administrative law judge was ruling on the timeliness of appeal issues. The claimant departed from the hearing without notice to the administrative law judge. When the administrative law judge attempted to ask the claimant whether she had questions about the steps that would follow the appeal hearing, the administrative law judge learned from the claimant's husband that the claimant had departed from the hearing.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Yahaira Escalera (claimant) established an original claim for benefits that was effective November 27, 2022. At the time the claimant established her claim for benefits, she provided Iowa Workforce Development an Albert Lea, Minnesota mailing address. The claimant has continued to reside at the same address. The claimant's native language is Spanish. The claimant completed 10th grade. The claimant is able to read and speak Spanish. The claimant entered the United States two years ago. The claimant did not study English either before or after she arrived in the U.S. The claimant is able to fluently read and speak Spanish. The claimant is unable to read English and has some but limited ability to understand spoken English. The claimant has at all relevant times resided with her husband, who is also a native Spanish speaker. The claimant's husband has significant ability to understand spoken English and to converse in English. The claimant's husband has some but limited ability to read English. The claimant also resides with two young adult children whose native language is Spanish and who have not studied English.

On December 6, 2022, Iowa Workforce Development mailed the December 6, 2022 (reference 01) work search warning decision to the claimant's last-known address of record. The reference 01 decision stated the decision would become final unless an appeal was postmarked by December 16, 2022 or was received by the Appeals Section by that date. While the decision was primarily in English, significant portions of the decision were in Spanish. This included a warning at the bottom of the decision. The Spanish-language warning, translated into English, states as follows:

Important!

It is very important that you understand the information contained in this decision. This decision may affect your unemployment insurance benefits, rights and/or responsibilities. If you need assistance translating and understanding the decision, please call 1-866-239-0843. If this decision deems you ineligible for unemployment insurance benefits and is not appealed, you may be asked to repay any benefits you received. This decision is final unless an appeal is filed. Appeal information is on the back of this page.

The backside of the decision included a reminder of the deadline for appeal, a reminder of the finality of the decision if it was not appealed, instructions filing an appeal, and additional information. All of this information set forth in English and in Spanish. The English version of the reminder states as follows:

Notice: Deadline for Appeal

This decision is final unless it is appealed. All appeals must be postmarked or received within 10 calendar days from the Decision Date. If the 10th day falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Immediately below the reminder, the decision set forth in English and in Spanish clear and concise instructions for filing an appeal online, by fax, by mail, or by email.

The claimant received the decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal by the appeal deadline or at any time prior to October 9, 2023.

On February 21, 2023, Iowa Workforce Development mailed six benefit denial decisions (reference 02, 03, 04, 05, 06 and 07) to the claimant's address of record. The several decisions

together denied benefits for each of the six consecutive weeks between December 18, 2022 and January 28, 2023. Each decision stated the decision would become final unless an appeal was postmarked by March 3, 2023 or was received by the Appeals Section by that date. While each decision was primarily in English, each decision included the same Spanish language warning, appeal deadline reminder, and appeal instructions. The claimant received each decision in a timely manner, prior to the deadline for appeal, but did not take steps to file an appeal by the appeal deadline or at any time prior to October 9, 2023.

On March 15, 2023, Iowa Workforce Development mailed six benefit overpayment decisions (reference 08, 09, 10, 11, 12, 13) to the claimant's address of record. The several decisions each held the claimant was overpaid \$504.00 in benefits for one of the six consecutive weeks between December 18, 2022 and January 28, 2023, due to one of the several benefit disqualification decisions mailed on February 21, 2023. Each decision stated the decision would become final unless an appeal was postmarked by March 25, 2023 or was received by the Appeals Section by that date. Each decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 25, 2023 was a Saturday and the next working day was Monday, March 27, 2023. While each decision was primarily in English, each decision included the same Spanish language warning, appeal deadline reminder, and appeal instructions. The claimant received each overpayment decision in a timely manner, prior to the deadline for appeal, but did not take steps to file an appeal by the extended appeal deadline or at any time prior to October 9, 2023.

On March 30, 2023, Iowa Workforce Development mailed the March 30, 2023 (reference 14) tax refund offset decision to the claimant's address of record. The claimant received the reference 14 decision in a timely manner, prior to the deadline for appeal, but took no steps in response to the decision.

Throughout the time the claimant was receiving decisions from IWD, she left several decision envelopes unopened and erroneously assumed all correspondence from IWD was favorable to her. The claimant elected not to contact IWD or the Appeals Bureau with questions, for translation of a decision, or to otherwise discuss the decisions. The claimant elected to take no action despite the Spanish language warning, reminder, and instructions that appeared on each decision.

On September 10, 2023, IWD collections personnel contacted the claimant by telephone in an attempt to recover the \$3,024.00 total outstanding overpayment. During that contact, collections personnel provided the claimant with appeal instructions. The claimant elected to delay acting on that guidance.

On October 9, 2023, the claimant completed and transmitted an online appeal. The claimant indicated she was appealing from the reference 12 decision. The claimant stated in the appeal that IWD collections personnel had contacted her on September 10, 2023 and had provided appeal instructions at that time. The Appeals Bureau received the electronic appeal on October 9, 2023 and treated it as a late appeal from the reference 01 through reference 13 decisions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date

of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

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 Ct. 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.*

Claimant's husband's testimony followed the claimant's testimony and both contradicted and refuted material elements of the claimant's testimony. In her testimony, the claimant had consistently and implausibly denied receipt of any of the decisions in question. The claimant's husband's testimony regarding the claimant receipt of the decisions, the claimant opening only a portion of the decisions, and the claimant assuming all decision were in her favor, revealed the claimant's testimony about not receiving the decisions to be intentionally false and intentionally misleading testimony.

The evidence in the record establishes an October 9, 2023 untimely appeal. The claimant received the decision in a timely manner, prior to the deadline for appeal. The decision included information in English and Spanish. Despite the claimant's lack of English language skills, the Spanish language warning at the bottom of the front of the decision and the Spanish language appeal deadline information at the top of the backside of the decision were sufficient to prompt a reasonable person to take timely action on the matter. Each decision included clear and concise appeal instructions in Spanish. The claimant unreasonably elected to take no action in response to the decision in question or in response to the many other decisions she received. Several months after the appeal deadline passed, the claimant was in contact with IWD collections on September 10, 2023. Even after that contact and guidance, the claimant unreasonably elected to wait another four weeks to file the October 9, 2023 appeal. The late filing of the appeal was not attributable to the Iowa Workforce Development or to the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the appellant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the December 6, 2022, (reference 01) work search warning decision was untimely. The decision remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

November 6, 2023
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
6200 Park Ave 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>.

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 Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.