

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

FERNANDO RESENDIZ CALVARIO
Claimant

APPEAL NO. 23A-UI-02180-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/17/22
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available, Work Search Requirement

STATEMENT OF THE CASE:

On February 16, 2023, Fernando Resendiz Calvario (claimant) filed a late appeal from the October 7, 2022 (reference 05) decision that denied benefits for the week that ended September 24, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirements during that week and had earlier been warned about the requirements. After due notice was issued, a hearing was held on March 17, 2023. Claimant participated. There were five appeal numbers set for a consolidated hearing: 23A-UI-02178-JT-T, 23A-UI-02179-JT-T, 23A-UI-02180-JT-T, 23A-UI-02181-JT-T, and 23A-UI-02182-JT-T. CTS Language Link Spanish-English interpreters Monica Solis (14953) and Lucia Ramirez (14772) assisted with the hearing. Exhibits A and B, the Spanish and English online appeals, were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the reference 02, 3, 5, 8 and 9 decisions, DBRO, KCCO, KLOG, and the supplemental/fact-finding documents associated the reference numbers in question.

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:

Fernando Resendiz Calvario (claimant) is a Spanish-speaking person with some English language skills. The claimant established an original claim for benefits that was effective July 17, 2022. The claimant was at time residing with his adult son's family in an apartment in Dallas, Texas. The Dallas address is the claimant's permanent residence. The claimant's son is bilingual and reads and speaks English and Spanish. At the time the claimant established the original claim, he gave Iowa Workforce Development a Calexico, California post office box address as his mailing address. Iowa Workforce Development noted the claimant had not provided a residence address. IWD fraud prevention practices require that claimants provide a residence address to which a benefits debit card will be mailed. On August 4, 2022, the

claimant provided the Dallas, Texas apartment address as his mailing address. The claimant understood that all correspondence from IWD would thereafter be directed to the Dallas, Texas address of record. The claimant relocated to Calexico, California in August 2022. The claimant did not take steps to ensure timely communication regarding mail delivered to the Dallas, Texas address of record. The claimant did not update his mailing address with IWD in connection with the move to California. From August 2022, IWD directed all correspondence to the Dallas, Texas address of record until February 2, 2023, when the claimant provided the Calexico, California post office box address as his updated mailing address.

On August 30, 2022, Iowa Workforce Development mailed the August 30, 2022 (reference 02) work search warning decision to the claimant's Dallas, Texas last-known address of record. The reference 02 decision stated the decision would become final unless an appeal was postmarked by September 9, 2022 or was received by the Appeals Section by that date. The decision included clear and concise instructions for filing an appeal online, by fax or by mail. The reference 02 decision was delivered to the Dallas, Texas address of record in a timely manner, prior to the September 9, 2022 appeal deadline. The claimant did not take steps to file an appeal from the decision by the September 9, 2022 appeal deadline. The claimant asserts he was unaware of the reference 02 decision until February 2023. That assertion is contradicted by the claimant's participation in fact-finding interviews on October 4 and 6, 2022 pertaining to the October 5, 2022 (reference 03) and October 7, 2022 (reference 05) decisions and the question of whether the claimant failed to meet the work search requirements during the weeks ending September 17 and 24, 2022, after the earlier warning. The claimant's assertion that he was unaware of any of the five adverse decisions until February 2023 is contradicted by the claimant's multiple contacts with IWD in October and November 2022.

On October 5, 2022, Iowa Workforce Development mailed the October 5, 2022 (reference 03) decision to the claimant's Dallas, Texas last-known address of record. The reference 03 decision denied benefits for the week that ended September 17, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirements during the week that ended September 17, 2022 and had earlier been warned about the requirement. The reference 03 decision stated the decision would become final unless an appeal was postmarked by October 15, 2022 or was received by the Appeals Section by that date. The 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. October 15, 2022 was a Saturday and the next working day was Monday, October 17, 2022. The decision included clear and concise instructions for filing an appeal online, by fax or by mail. The reference 03 decision was delivered to the claimant's Dallas, Texas address of record in a timely manner, prior to the October 17, 2022 extended deadline for appeal. The claimant did not take steps to file an appeal from the decision by the October 17, 2022 effective appeal deadline.

On October 7, 2022, Iowa Workforce Development mailed the October 7, 2022 (reference 05) decision to the claimant's Dallas, Texas last-known address of record. The reference 05 decision denied benefits for the week that ended September 24, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirements during the week that ended September 24, 2022 and had earlier been warned about the requirement. The reference 05 decision stated the decision would become final unless an appeal was postmarked by October 17, 2022 or was received by the Appeals Section by that date. The decision included clear and concise instructions for filing an appeal online, by fax or by mail. The reference 05 decision was delivered to the claimant's Dallas, Texas address of record in a timely manner, prior to the October 17, 2022 deadline for appeal. The claimant did not take steps to file an appeal from the decision by the October 17, 2022 appeal deadline.

On October 31, 2022, Iowa Workforce Development mailed two overpayment decisions to the claimant's Dallas, Texas address of record. The October 31, 2022 (reference 08) decision held the claimant was overpaid \$593.00 in benefits for the week that ended September 17, 2022, due to the October 5, 2022 decision that disqualified the claimant for benefits for that week. The October 31, 2022 (reference 09) decision held the claimant was overpaid \$593.00 in benefits for the week that ended September 24, 2022, due to the October 7, 2022 decision that disqualified the claimant for benefits for that week. The reference 08 and 09 overpayment decisions each stated the decision would become final unless an appeal was postmarked by November 10, 2022 or was received by the Appeal Section by that date. Each decision included clear and concise instructions for filing an appeal. The reference 08 and 09 decisions were delivered to the claimant's Dallas, Texas address of record in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal from either overpayment decision by the November 10, 2022 deadline.

On February 16, 2023, the claimant completed and transmitted online appeals, one in Spanish and one in English, from the reference 09 overpayment decision. The Appeals Bureau received the appeal on February 16, 2023 and treated as an appeal from all five adverse decisions mentioned above.

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).

The evidence in the record establishes an untimely appeal from the October 7, 2022 (reference 05) disqualification decision. The weight of the evidence establishes the decision was delivered in a timely manner to the claimant's Dallas, Texas address of record, but that the claimant had not taken reasonable steps to ensure timely communication regarding mail delivered to the Texas address. The claimant unreasonably delayed filing the appeal to February 16, 2023. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of 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 October 7, 2022 (reference 05) disqualification decision was untimely. The decision that denied benefits for the week that ended September 24, 2022 remains in effect.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

March 20, 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
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>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 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.