

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

---

**COLE T DURBIN**

Claimant

**NEUMANN BROTHERS INC**

Employer

**APPEAL 23A-UI-05063-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/22  
Claimant: Respondent (1)**

---

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

**STATEMENT OF THE CASE:**

Newumann Brothers Inc, the employer/appellant,<sup>1</sup> filed an appeal from the Iowa Workforce Development April 24, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Mr. Durbin REGULAR (state) UI benefits as of April 9, 2023 because IWD concluded that he was on a short-term layoff and he was able to and available for work during the layoff. The Iowa Department of Inspections and Appeals (DIA) UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Durbin. The undersigned administrative law judge held a telephone hearing on June 2, 2023. The employer participated through Erin Davis, payroll accountant. Mr. Durbin participated personally. The undersigned took official notice of the administrative record.

**ISSUES:**

Did the employer file its appeal on time?  
Is Mr. Durbin able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the April 24, 2023, (reference 01) UI decision to the employer at the correct address on April 24, 2023. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by May 4, 2023. The employer received the decision in the mail. The employer did not appeal the decision because the employer did not disagree with the decision.

IWD mailed the employer a May 9, 2023 statement of charges for the First quarter of 2023 that listed charges of \$1,022.00 to the employer's account for UI benefits IWD paid to Mr. Durbin. The employer received the statement. The employer understood the statement to mean that IWD paid Mr. Durbin UI benefits for two weeks in January 2023. The employer had laid off Mr. Durbin on Tuesday, January 3, 2023, and he returned to work on Monday, January 9, 2023.

---

<sup>1</sup> Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

The employer filed an appeal via email on May 15, 2023. The DIA UI Appeals Bureau received the employer's appeal on May 15, 2023. The DIA UI Appeals Bureau set up an appeal of the April 24, 2023 (reference 01) UI decision.

The employer intended to appeal the charges to its account for UI benefits it believed IWD paid to Mr. Durbin for the second week of January 2023. The administrative record (DBRO screen) shows Mr. Durbin filed a weekly UI claim for the week of January 1-7, 2023. Based on the wages he reported, IWD paid Mr. Durbin \$507.00 (gross) in UI benefits for this week. The administrative record also shows Mr. Durbin filed a weekly UI claim for the week of December 25-31, 2022. Based on the wages he reported, IWD paid Mr. Durbin \$515.00 (gross) in UI benefits for this week. \$507.00 plus \$515.00 equals \$1,022.00.

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

For the reasons that follow, the undersigned concludes the employer did not file its appeal of the April 24, 2023 (reference 01) UI decision 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 undersigned has no

authority to change the decision of a representative if a timely appeal is not filed.<sup>2</sup> Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.<sup>3</sup>

The employer received the April 24, 2023 (reference 01) UI decision before the appeal deadline and, therefore, could have filed an appeal by the deadline. The notice provision of the decision was valid. The employer's delay in filing its appeal was not due to an error or misinformation from IWD or due to delay or other action of the United States Postal Service. The employer has not established any other good cause reason for the delay in filing its appeal. The employer did not file its appeal of the April 24, 2023 (reference 01) UI decision on time and the undersigned lacks jurisdiction (authority) to decide the other issue in this matter.

**DECISION:**

The employer did not file its appeal of the April 24, 2023 (reference 01) UI decision on time. The April 24, 2023 (reference 01) UI decision that allowed Mr. Durbin REGULAR (state) UI benefits as of April 9, 2023 is AFFIRMED.



---

Daniel Zeno  
Administrative Law Judge

---

June 5, 2023  
Decision Dated and Mailed

r/s

---

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

<sup>3</sup> *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).

**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  
4<sup>th</sup> 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.

**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 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.