

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

EMILIANO T MARTINEZ

Claimant

APPEAL 22A-UI-11158-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/02/21

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On May 2, 2022, claimant Emiliano T. Martinez filed an appeal from the October 14, 2021 (reference 03) unemployment insurance decision that denied benefits for the one-week period ending September 18, 2021 based on a determination that the claimant reported he was not able to and available for work that week. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Monday, January 30, 2023. Appeal numbers 22A-UI-11156-LJ-T, 22A-UI-11157-LJ-T, 22A-UI-11158-LJ-T, and 22A-UI-11159-LJ-T were heard together and created one record. The claimant, Emiliano T. Martinez, participated personally. Attorney Sheree L. Smith represented the claimant. Iowa Workforce Development (“IWD”) did not participate in the hearing. No exhibits were marked or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant fail to report as directed by a department representative?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant opened a claim for benefits with an effective date of May 2, 2021. His weekly benefit amount for that claim year was \$493.00.

On September 27, 2021, IWD issued claimant a decision (reference 01) stating he was not eligible for benefits effective August 22, 2021 because he failed to report as directed by a department representative. The administrative record does not contain any notice sent to claimant notifying him to report or otherwise be available for a fact-finding interview.

Claimant filed weekly continued claims for the weeks ending September 4, 2021; September 11, 2021; and September 18, 2021. When claimant filed his weekly claims each week, he was asked if he was able to work and available for work. Claimant reported “No” for the weeks

ending September 11, 2021 and September 18, 2021. A screenshot from IWD's mainframe system showing claimant's weekly claims from each of those weeks is below:

WEEK	WK	AB	RF	ER
ENDING	ST	AV	OF	CT
09/18/21	N	N	N	3
09/11/21	N	N	N	3
09/04/21	N	Y	N	3

Claimant was, in fact, able to and available for work both of those weeks. He was in town in Cedar Falls and ready to commence employment. Claimant had transportation, and he had no other barriers to employment that would have prevented him from accepting a job or working.

Claimant did not receive the September 27, 2021 (reference 01) decision that denied him benefits effective August 22, 2021 based on a failure to report to IWD as directed. He also did not receive the October 14, 2021 (reference 02) decision denying him benefits for the week ending September 11, 2021 or the October 14, 2021 (reference 03) decision denying him benefits for the week ending September 18, 2021. Claimant was living at the Main Street address in Cedar Falls at the time, and he was working from home as well, so he was the primary person responsible for checking the mail each day. Claimant was not living at that address when the April 21, 2022 (reference 04) decision was mailed, but his family members received it and made him aware of it. Claimant filed an appeal on May 2, 2022, and that appeal was applied to all four decisions adverse to his claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work for the week ending September 11, 2021. Benefits are allowed, provided the claimant is otherwise eligible to receive them.

The first issue is whether claimant's appeal is timely filed. The administrative law judge finds it is. 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:

1. 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:

- (a) 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).

Here, claimant did not have an opportunity to appeal the fact-finder's reference 03 decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was claimant's first notice that he had received benefits for which he may not be eligible. Once that appeal was received, it was applied to the underlying disqualification decisions, including this decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is able to and available for work. Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37", paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c"...

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

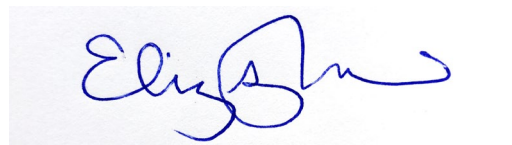
(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Some common reasons that claimants are found unavailable for work include lack of transportation, lack of childcare, being out of town for personal reasons the majority of the workweek, and unduly limiting themselves to either an unreasonably small geographic area for work, an unreasonably narrow field of work, or holding out for one employer. See Iowa Admin. Code r. 871-24.23.

In this case, claimant had no physical, mental, or logistical barriers to employment the week ending September 18. He had transportation available to him, and he was in town and ready to accept work if employment was offered to him. Claimant did not describe any other impediments to working during his testimony, and there is no other indication that his self-reported “No” to the able and available question was anything other than a simple mistake. Accordingly, benefits are allowed.

DECISION:

The October 14, 2021 (reference 03) unemployment insurance decision is reversed. Claimant is able to and available for work for the week ending September 18, 2021. Benefits are allowed, provided he is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

January 31, 2023
Decision Dated and Mailed

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> 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 adquiriera 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.