

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

AMANDA C NEY
Claimant

APPEAL 22A-UI-09960-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/24/21
Claimant: Appellant (4R)**

Iowa Code § 96.4(4) - Eligibility of Benefits - Second Benefit Year
Iowa Code § 96.7(2)a(2) - Charges - Same Base Period Employment
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On April 18, 2022, Amanda Ney, claimant/appellant, filed an appeal from the March 2, 2021, (reference 01) decision that denied regular benefits effective 01/24/21, based on an Agency determination that the claimant did not meet the eight-times-weekly-benefit-amount minimum earnings requirement and therefore was not monetarily eligible for benefits in a second benefit year. After due notice was issued, a hearing was held on June 8, 2022, at 11:00AM. The department did not participate. Claimant personally participated. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09960-DH-T; 22A-UI-09961-DH-T; and 22A-UI-09962-DH-T. Judicial notice was taken of the administrative record, DBIN, and WAGE.

ISSUES:

Was the appeal timely?

Has the claimant worked and earned sufficient wages (the eight-times weekly benefit amount earnings requirement) to be monetarily eligible for benefits in a second benefit year?

Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record and heard the testimony, the undersigned finds:

Claimant's appeal is dated April 18, 2022. To be timely, the appeal needed to be filed on or before 03/12/21. The decision was mailed to claimant's last known address on 03/02/21, which is the same address she currently uses. Claimant never received the decision. Claimant first learned about the decision when she received the overpayment decisions (reference 02 and 03), which she timely appealed.

The claimant established an original claim for benefits that was effective 01/26/20. Iowa Workforce Development (IWD) set the weekly benefit amount at \$301.00. Eight times \$301.00 is \$2,408.00. The claimant received benefits in connection with the claim. The benefit year that

began for the claimant on 01/26/20 expired on 01/24/21. The claimant established a new claim year that was effective 01/24/21.

Per the WAGE record, claimant had no reported wages during the second quarter of 2020 through the end of the first quarter of 2021 (April 2020 - March 2021) reflecting that claimant was not employed and did not earn or receive any wages.

Per the WAGE record, claimant was paid \$4,871.00 in the second quarter of 2021. This amount exceeds the \$2,408.00 threshold for claimant to qualify for benefits in a second benefit year, however the exact date of qualifying in the second quarter has not been proven.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

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Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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 representative's decision 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant's receipt of the companion overpayment decisions (reference 02 and 03) in April 2022, was her first notice of the disqualification. Claimant timely appealed the two overpayment decisions. Therefore, this appeal shall be accepted as timely.

The next issues to address are whether claimant worked and earned sufficient wages to be eligible for benefits in a second benefit year and if so, when and whether the employer's account is subject to charge. For the reasons that follow, the administrative law judge concludes claimant was not eligible for benefits in the second benefit year until sometime in the second quarter of 2021. Due to claimant not being eligible for benefits for the timeframe addressed the employer is not to be charged during claimant's disqualification window.

Iowa Code section 96.4(4)(a-c) provides:

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

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. *If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year. [Emphasis added.]*

The evidence in the record establishes that the claimant has not met the eight-times-weekly-benefit-amount minimum earnings requirement through the end of March 2021, but that sometime in the second quarter of 2021, claimant did meet the wage threshold to qualify for benefits.

The claimant was not monetarily eligible for benefits in the new claim year during the period prior the second quarter of 2021. Claimant became monetarily eligible for benefits sometime in the second quarter of 2021. This matter is remanded to the Benefits Bureau for them to make a determine as to the specific date claimant became eligible in the second quarter, such as through solicitation of payroll records from claimant and employer. The question on whether employer's account is charged is moot due to claimant not being eligible for benefits as above addressed. The employer's account is not to be charged.

DECISION:

The March 2, 2021, (reference 01) decision that denied regular benefits effective 01/24/21 due to claimant not meeting the eight-times-weekly-benefit-amount minimum earnings requirement and therefore was not monetarily eligible for benefits in a second benefit year is MODIFIED in favor of appellant. It is found that claimant met the eight-times-weekly-benefit-amount minimum earnings requirement sometime in the second quarter of 2021 and is monetarily eligible for regular benefits in connection with the new, second benefit year at that time. The claimant must meet all other eligibility requirements. The claimant was not monetarily eligible for benefits in the new claim year during the period prior to the second quarter 2021, making the issue of charging the employer's account moot as the employer should not be charged during claimant's disqualification window, as claimant was not eligible.

REMAND:

This matter is remanded to the Benefits Bureau for them to make a determination with appeal rights as to the specific date claimant became eligible for benefits in the second quarter of 2021 (such as through solicitation of payroll records from claimant and employer) and to make any other determinations not inconsistent with this direction.



Darrin T. Hamilton
Administrative Law Judge

September 30, 2022
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> 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.