

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

THOMAS J SCHMIT
Claimant

B & D MFG INC
Employer

APPEAL 23A-UI-05891-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/28/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(3) – Appeals

STATEMENT OF THE CASE:

On June 8, 2023, claimant Thomas J. Schmit filed an appeal from the August 18, 2021 (reference 02) unemployment insurance decision that denied benefits based on a determination that his separation was adjudicated as disqualifying in his prior claim year. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Wednesday, June 28, 2023. Appeal numbers 23A-UI-05889-LJ-T and 23A-UI-05891-LJ-T were heard together and created one record. The administrative law judge subsequently incorporated this hearing record into the combined record for appeals 23A-UI-05890-LJ-T, 23A-UI-05892-LJ-T, and 23A-UI-05893-LJ-T. Claimant Thomas J. Schmit participated. Claimant's wife, Margaret Dohrer, acted as claimant's representative and also testified. Employer B & D Manufacturing Inc. participated through Tracy Warnke, Head of Finance and HR. Shanda White was present but did not testify. Claimant's Exhibits A, B, and C and Employer's Exhibits 1, 2, 3, and 4 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal? Is there good cause to treat the claimant's appeal as timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision finding claimant was denied benefits based on his separation from employment was mailed to claimant's last known address of record on August 17, 2021. The decision finding claimant was denied benefits in his second claim year based on the prior disqualifying separation decision was mailed to that same address of record one day later, on August 18, 2021. He is not sure whether he received either decision at the time they were sent. Claimant checks his mail on a daily basis. He admits that he can receive something in the mail one day and not remember it by the following day. Dohrer also checks the mail at the residence, and she does not recall either decision arriving in August 2021.

The first sentence of each decision states, “If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay.” Both decisions contained a warning that an appeal must be postmarked or received by the Appeals Bureau by a certain date. The separation decision had an appeal deadline of August 27, 2021; the prior disqualifying separation decision had an appeal deadline of August 28, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. August 28, 2021 fell on a Saturday, so claimant had until August 31, 2021, to appeal the second benefit year disqualification decision. Claimant did not file an appeal in August 2021.

The decision finding claimant was overpaid multiple types of unemployment benefits was mailed to claimant’s last known address of record on April 25, 2022. Claimant specifically recalls receiving this decision. As soon as he received it, he contacted Iowa Workforce Development via telephone. An agency representative assisted claimant in establishing a payment plan for the overpayment. He did not file an appeal at the time he received the overpayment decision. At that point, it felt futile to do so.

The decision denying claimant’s application to waive his Pandemic Emergency Unemployment Compensation (“PEUC”) benefits overpayment; his Federal Pandemic Unemployment Compensation (“FPUC”) benefits overpayment; and his Lost Wages Assistance Program (“LWAP”) benefits overpayment was sent to his most recent address of record on May 30, 2023. Claimant received this decision. He filed an appeal of that decision on June 8, 2023, and the appeal was applied to all underlying decisions as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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 in relevant part for claimants:

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 (“USPS”) 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.

...

- (c) If transmitted by any means other than [USPS], 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.

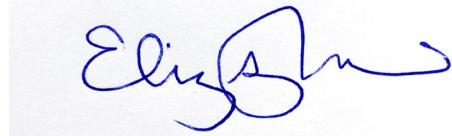
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change a representative's decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the notice is proven 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, the record is somewhat unclear as to whether claimant received the two decisions sent in August 2021. However, claimant and Dohrer agree that claimant received the overpayment decision in a timely manner. Once claimant had that decision in hand, he knew IWD found him either ineligible for or disqualified from the benefits he initially received. That overpayment had the same information it that the two decisions sent in August did, in terms of appeal rights and agency contact information. Claimant chose to contact the agency, but he chose not to exercise his appeal rights.

Claimant's delay in appealing was not due to an error or misinformation from the Department or due to delay or other action (or inaction) of the USPS. He has not established through testimony or documentation any other good cause for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the underlying issue in this matter.

DECISION:

The August 18, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge

June 30, 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> 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.