

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT T TUCKER
Claimant

APPEAL 24A-UI-00034-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/02/22
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(3) – Work Search Requirements

STATEMENT OF THE CASE:

On December 29, 2023, claimant Scott T. Tucker filed an appeal from the October 31, 2023 (reference 04) unemployment insurance decision that denied benefits for the week ending June 10, 2023, due to inadequate reemployment activities. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on January 5, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 10:00 a.m. on Friday, January 19, 2024. Appeal numbers 24A-UI-00033-LJ-T, 24A-UI-00034-LJ-T, 24A-UI-00035-LJ-T, 24A-UI-00036-LJ-T, 24A-UI-00037-LJ-T, 24A-UI-00038-LJ-T, and 24A-UI-00039-LJ-T were heard together and created one record. Claimant Scott T. Tucker participated. No exhibits were admitted into the hearing record. The administrative law judge took official notice of the administrative record, including claimant's unemployment insurance claim records and the decisions IWD sent to claimant.

ISSUE:

Is the appeal timely? Is there 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:

Claimant opened his claim for benefits with an effective date of October 2, 2022. Based on his base period wages, IWD calculated claimant's weekly benefit amount at \$551.00. He filed one weekly claim in October 2022; he filed a second weekly claim for benefits in December 2022; and then he began regularly filing for benefits in May 2022. Claimant filed weekly continued claims for benefits for the weeks ending May 20; June 10; June 17; and June 24, 2023. IWD's mainframe screen that records each weekly claim indicates claimant logged and certified zero weekly continued claims for each of those weeks.

IWD sent claimant the May 23, 2023 (reference 03) warning for failing to log and certify four reemployment activities during the week ending May 20. Claimant did not receive that warning at the time IWD sent it. He admits he was having difficulty logging and certifying his reemployment activities at the time. Claimant tried for the first two weeks that he filed in May just to establish

his IowaWorks account. Then, after he successfully opened this account, he was not able to log and certify his reemployment contacts. Claimant did not write down any of the job searches he made, and he did not retain any records related to his reemployment efforts.

IWD sent claimant three denial decisions on October 31, 2023, each related to claimant's failure to make reemployment contacts during a specific week in May 2023. The reference 04 decision denied benefits for the week ending June 10, 2023; the reference 05 decision denied benefits for the week ending June 17, 2023; and the reference 06 decision denied benefits for the week ending June 24, 2023. 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." The decisions contained identical warnings that an appeal must be postmarked or received by the Appeals Bureau by November 10, 2023. Because November 10 fell on the Veteran's Day holiday, claimant had until Monday, November 14 to file his appeal.

Claimant remembers receiving the three decisions in early November 2023. He set the disqualification decisions aside after receiving them and chose not to appeal at the time. due to severe depression and procrastination. Later, claimant received three decisions from IWD dated December 20, 2023, each finding him overpaid one week of benefits. After receiving these decisions, claimant "had procrastinated long enough;" he decided to file his appeal at that time.

Claimant received a full \$551.00 benefit payment for the week ending June 10, 2023.
Claimant received a full \$551.00 benefit payment for the week ending June 17, 2023.
Claimant received a full \$551.00 benefit payment for the week ending June 24, 2023.

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:

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 Date 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.

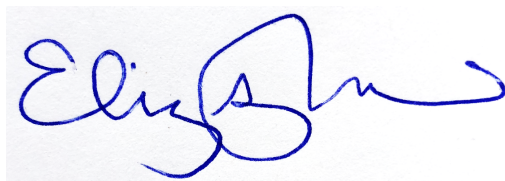
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant admits he did not assert his appeal rights until after receiving the overpayment decisions. He has not presented any good-cause reason for failing to exercise his appeal rights prior to the deadline. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

DECISION:

The October 31, 2023 (reference 04) 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

January 23, 2024
Decision Dated and Mailed

lj/rvs

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.