

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

DEREK K KOHL
Claimant

APPEAL NO. 23A-UI-09458-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/09/22
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On October 6, 2023, Derek Kohl (claimant) filed a late appeal from the February 23, 2023 (reference 13) decision that held he was overpaid \$326.00 in benefits for the week that ended December 31, 2022, due to a February 2, 2023 decision that disqualified him for benefits for that week in connection with an inadequate work search. After due notice was issued, a hearing was held on October 23, 2023. Claimant participated. Iowa Workforce Development did not participate. There were 10 appeal numbers consolidated into one hearing: 23A-UI-09450-JT-T, 23A-UI-09451-JT-T, 23A-UI-09452-JT-T, 23A-UI-09453-JT-T, 23A-UI-09454-JT-T, 23A-UI-09455-JT-T, 23A-UI-09456-JT-T, 23A-UI-09457-JT-T, 23A-UI-09458-JT-T, and 23A-UI-09459-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01 through reference 14 decisions, DBIN, KCCO, NMRO, WAGEA, KFFV, DBRO and the reference 05 through reference 09 fact-finding interview documents.

ISSUE:

Whether the appeal was timely. Whether there is 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:

Derek Kohl (claimant) established an original claim for benefits that was effective October 9, 2022. Since that time, the claimant has resided at the same Cedar Rapids address of record.

The claimant received each of the several decisions referenced below in a timely manner. The claimant engaged in a pattern whereby he did not entirely read the decisions, did not note that each decision included a deadline for appeal, became upset by each decision, and discarded each decision.

On November 23, 2022, Iowa Workforce Development (IWD) mailed the November 23, 2022 (reference 01) decision to the claimant's Cedar Rapids last-known address of record. The

reference 01 decision held the claimant was required to actively seek work and keep a complete record of his reemployment activities for each weekly claim filed after the November 23, 2022 (reference 01) decision. The reference 01 decision stated the claimant must conduct at least four reemployment activities, including three job applications, each claim week. The reference 01 decision stated the decision would become final unless an appeal was postmarked by December 3, 2022 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 3, 2022 was a Saturday and the next working day was Monday, December 5, 2022. The reference 01 decision included clear and concise instructions for filing an appeal. The reference 01 decision included the IWD customer service number the claimant could call if he had questions about the decision. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal from the decision by the appeal deadline or at any time prior to October 6, 2023.

On November 30, 2022, Iowa Workforce Development mailed the November 30, 2022 (reference 02) decision to the claimant's Cedar Rapids last-known address of record. The reference 02 decision reminded the claimant that he was required to engage in four reemployment activities, including three job applications, each benefit week and warned the claimant could be disqualified for benefits for future weeks in which the claimant did not meet the work search requirement. The reference 02 decision cited the claim for the week ending November 26, 2022 as the basis for the work search warning. The reference 02 decision included clear and concise instructions for filing an appeal. The reference 02 decision included the IWD customer service number the claimant could call if he had questions about the decision. The reference 02 decision stated the decision would become final unless an appeal was postmarked by December 10, 2022 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 10, 2022 was a Saturday and the next working day was Monday, December 12, 2022. The claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal from the decision by the appeal deadline or at any time prior to October 6, 2023.

On February 1, 2023, the claimant participated in a fact-finding interview that addressed whether he was able to work, available for work, and engaged in an active and earnest search for new employment, during the five benefit weeks between December 11, 2022 and January 14, 2023.

On February 2, 2023, Iowa Workforce Development mailed five decisions (reference 05 through reference 09) to the claimant's Cedar Rapids address of record. The claimant received each decision in a timely manner, prior to the deadline for appeal. Each decision addressed a different week of the claim. The reference 08 decision allowed benefits for the week that ended January 7, 2023, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant was able to work, available for work, and met the work search requirement during that week. The reference 05 decision denied benefits for the week that ended December 17, 2022. The reference 06 decision denied benefits for the week that ended December 24, 2022. The reference 07 decision denied benefits for the week that ended December 31, 2022. The reference 09 decision denied benefits for week that ended January 14, 2023. The reference 05, 06, 07 and 09 decisions each held the claimant did not meet the reemployment activities requirements during the affected week and had previously been warned about the requirements. The reference 05, 06, 07 and 09 decisions each stated the decision would become final unless an appeal was postmarked by February 12, 2023 or

was received by the Appeals Section by that date. The reference 05, 06, 07 and 09 decisions each included clear and concise instructions for filing an appeal. The decisions each included the IWD customer service number the claimant could call if he had questions about the decision. The claimant did not take steps to file an appeal from any of the February 2, 2023 disqualification decisions by the appeal deadline or any time prior to October 6, 2023.

On February 23, 2023, IWD mailed four overpayment decisions (reference 11, 12, 13, and 14) to the claimant's Cedar Rapids address of record. The claimant received each of the overpayment decisions in a timely manner, prior to the deadline for appeal. The reference 11 decision held the claimant was overpaid \$354.00 in benefits for the week that ended December 17, 2022. The reference 12 decision held the claimant was overpaid \$354.00 in benefits for the week that ended December 24, 2022. The reference 13 decision held the claimant was overpaid \$326.00 in benefits for the week that ended December 31, 2022. The reference 14 decision held the claimant was overpaid \$265.75 in benefits for the week that ended January 14, 2023. Each decision referred to an earlier February 2, 2023 disqualification decision as the basis for the overpayment determination. Each of the overpayment decisions stated the decision would become final unless an appeal was postmarked by March 5, 2023 or was received by the Appeals Section by that date. Each overpayment decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 5, 2023 was a Sunday and the next working day was March 6, 2023. Each overpayment decision included clear and concise instructions for filing an appeal. Each overpayment decision included the IWD customer service number the claimant could call if he had questions about the decisions. The claimant did not take steps to file an appeal from any of the overpayment decisions by the appeal deadline or at any time prior to October 6, 2023.

The claimant established an "additional claim" for benefits that was effective July 23, 2023, made a weekly claim for the week that ended July 29, 2023, but did not receive benefits in connection with that additional claim.

The claimant established another "additional claim" that was effective October 1, 2023.

On October 6, 2023, the claimant went to the Cedar Rapids IowaWORKS Center and spoke to an IWD representative. On October 6, 2023, an IWD representative assisted the claimant in completing an appeal form. The appeal form mentioned a reference 10 summary document that IWD had mailed at the same time as the several February 2, 2023 disqualification decisions. The claimant signed the appeal form and left it with the IWD staff so they could fax the appeal to the Appeals Bureau. The IWD staff faxed the appeal to the Appeals Bureau on October 6, 2023 and attached the reference 11 through 14 overpayment decisions, along with the reference 10 summary document. The Appeals Bureau received the appeal on October 6, 2023 and treated it as a late appeal from the reference 01, 02, 05, 06, 07, 09, 11, 12, 13 and 14 decisions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information

concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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 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). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the appeal deadline, but unreasonably delayed filing the appeal to October 6, 2023. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the appellant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the February 23, 2023 (reference 13) overpayment decision was untimely. The decision that held the claimant was overpaid \$326.00 in benefits for the week that ended December 31, 2022 remains in effect.



James E. Timberland
Administrative Law Judge

October 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
6200 Park Ave 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>.

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.