

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

JAMES P CORRELL
Claimant

CUSTOM-PAK INC – LP2
Employer

APPEAL 22A-UI-20076-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/25/22
Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On December 27, 2022, employer Custom-Pak Inc. – LP2 filed an appeal from the October 7, 2022 (reference 01) unemployment insurance decision that allowed benefits to claimant James P. Correll based on a determination that he was on a short-term layoff and was able to and available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Friday, January 20, 2022. Claimant James P. Correll participated personally. Employer Custom Pak Inc. participated through Erin Fulton, HR Coordinator. The administrative law judge took official notice of the administrative record, specifically including the notice of claim, statement of protest, unemployment insurance decision issued October 7, 2022 (reference 01), and claimant's record of weekly continued claims for benefits.

ISSUES:

Did the employer file a timely appeal?
Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Custom-Pak Inc. on September 22, 2009. He is currently employed with the company as a full-time machine operator. Claimant opened a claim for benefits with an effective date of September 25, 2022, due to anticipated layoffs at work. Custom-Pak Inc. did not have enough work available for the number of employees at its facility. Therefore, it would give employees the option to leave due to lack of work, based on seniority. Claimant accepted this option and worked reduced hours the weeks of October 1; October 15; and October 22. He reported his gross wages each week and received partial unemployment insurance benefits.

The week of October 23 through October 29, Custom-Pak Inc. shut down its facility for one week. No work was available for claimant or any other employee that week. During claimant's week of layoff, he experienced an injury that left him unable to perform his job for multiple weeks. When claimant returned to work on October 31, he reported the injury to the employer, and the employer filled out FMLA leave and short-term disability benefits paperwork for him. Claimant continued filing weekly continued claims for benefits, though the employer did not realize that at the time. He was released to return to work without restrictions on November 24, 2022.

Claimant returned to work the week of November 27, 2022. The employer was still experiencing a downturn in work, so he continued accepting the option to go home due to lack of work. Claimant worked some hours, reported his gross wages, and received partial benefits the week ending December 3, 2022. Claimant was totally laid off due to a lack of work for the two-week period between December 4 and December 17, 2022. He did not work the following week, the week ending December 24, but he received some vacation pay and reported this when he filed his weekly continued claim for benefits. Custom-Pak Inc. was shut down the week of December 25 through December 31, and claimant worked no hours that week. Claimant took a week of vacation the week of January 1 through January 7. He reported his vacation pay when filing his weekly claim. The following week, claimant returned to work and reported gross wages in excess of his weekly benefit amount plus fifteen dollars.

The decision allowing benefits based on the determination that claimant was on a short-term layoff was sent to the employer's address of record on October 7, 2022. Fulton received this decision. At the time it arrived, the employer did not appeal it because the employer did not disagree with it: claimant was working a reduced schedule based on intermittent lack of work. Fulton did not learn that claimant received benefits during the period of time when he was out of work due to his injury until December 27, 2022, when the claimant reported this to her. As soon as he informed her, she filed an appeal to alert Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer 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 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, the employer received the decision within days of its mailing by Iowa Workforce Development. It had an opportunity to appeal the decision and opted not to, as it did not disagree with the decision. Therefore, the administrative law judge must find she does not have jurisdiction to rule on the merits of this appeal: the employer's appeal is untimely filed.

The reason for the delayed appeal, however, warrants further action by the agency. For that reason, a full factual record was developed and is set forth above. This matter will be remanded for further fact-finding and unemployment insurance decisions by Iowa Workforce Development.

DECISION:

The October 7, 2022 (reference 01) unemployment insurance decision is affirmed. The employer failed to file a timely appeal.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development to hold a fact-finding interview on claimant's non-work-related injury occurring somewhere between October 20 and October 29, 2022, and to issue decisions addressing (1) claimant's ability to work between October 23, 2022 and November 26, 2022; and (2) any overpayment of benefits that has occurred, if appropriate.



Elizabeth A. Johnson
Administrative Law Judge

January 24, 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.