

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

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**PETRA ERSKINE**  
Claimant

**APPEAL 22A-UI-12972-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT COMMUNITY SCH DIST**  
Employer

**OC: 05/31/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) - Timely Appeal  
Iowa Code § 96.4(5) - Eligibility - Reasonable Assurance  
Iowa Code § 96.19(38) - Total, Partial and Temporary Unemployment  
Iowa Code § 96.4(3) - Able and Available to Work  
Iowa Code § 96.7(2)a(2) - Same Base Period Employment

**STATEMENT OF THE CASE:**

May 20, 2022, Ms. Petra Erskine, claimant/appellant, filed an appeal from the March 10, 2021, (reference 01) unemployment insurance decision that found you were eligible to receive unemployment benefits based on earnings with other noneducational employers and the Davenport Community School District will not be charged for benefits paid. After proper notice, a telephone hearing was conducted on July 14, 2022. Claimant participated personally. Employer, Davenport Community School District, did not participate. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-12972-DH-T, and 22A-UI-12973-DH-T. Judicial notice was taken of the administrative record, DBIN, and WAGE.

**ISSUES:**

Is the appeal timely?  
Is the claimant eligible for benefits between academic years or terms?  
Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having heard the testimony and considered the evidence and record, the undersigned finds:

The above decision was mailed to the claimant/appellant's last known address of record on 03/10/2021. To be timely, an appeal needed to be filed on or before 03/20/21, the first nonholiday weekday ten days after the mailing date. Claimant never received the decision. The first knowledge she had of the matter was the overpayment decision, when she timely submitted her 05/20/22 appeal.

Claimant was employed by the Davenport Community School District as a full-time support liaison. Claimant was also employed part-time with two other employers, both noneducational.

Claimant was laid off work from one of the noneducational employers. Claimant had reasonable assurance with Davenport Community School District. Claimant filed a claim for unemployment benefits with an original claim date of 05/31/20, claiming zero dependents. Claimant's benefits were recalculated after removing her educational wages, since she had reasonable assurance. With the educational wages removed, the below table shows the wages she did have to calculate her benefits. Claimant was eligible for benefits with a recalculated WBA of \$277.00. The recalculated maximum benefit amount (MBA) is the lessor of the WBA time 16 or one-third of the total base period wages. In this case, the lessor of \$4,432.00 or \$2,955.33. The recalculated MBA is \$2,955.33.

	2019 Q1	2019 Q2	2019 Q3	2019 Q4
UPS	\$401	-	-	\$722
Allsteel Inc	-	\$1368	\$6375	-
TOTALS	\$401	\$1368	\$6375	\$722

With claimant having reasonable assurance from employer and employers' wages being removed from benefit calculation, employer is not to be charged for any benefits paid.

#### **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:

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 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. 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 the decision, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issues are whether claimant was: 1) able to and available for work; 2) eligible for benefits between academic years; and/or 3) totally, partially, or temporarily unemployed. An additional issue is whether employer's account is subject to charge. For the reasons set forth below, the above decision is affirmed.

Iowa Code section 96.4(3) provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed "temporarily unemployed" if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Claimant, at the time, was a fulltime employee with the Davenport Community School District with reasonable assurance. She also held two parttime jobs, one with United Parcel Service (UPS), and the other with Allsteel, Incorporated. Claimant submitted a claim for unemployment benefits with an original claim date of 05/31/20, as she was laid off from work from one of her parttime jobs.

Her unemployment benefits were calculated utilizing all reported wages and her weekly benefit amount (WBA) was calculated to be \$385.00. However, given she was still employed by her fulltime educational employer and had reasonable assurance, claimant was not eligible for benefits involving those wages. After removing the educational wages, claimant was eligible for benefits with the remaining noneducational wages. After recalculating benefits, claimant's

recalculated weekly benefit amount was \$277.00. Claimant's recalculated MBA was \$2,955.33. Claimant was totally unemployed from the parttime job, with the educational wages having been removed. Claimant is otherwise able and available to work.

Because the employer provided reasonable assurance and their wage were removed for the calculation of benefits, benefits paid shall not be charged against the account of the employer, Davenport Community School District.

For the reasons addressed, the decision is affirmed, and claimant is eligible for benefits, so long as she meets all other eligibility requirements.

**DECISION:**

The March 10, 2021, (reference 01) unemployment insurance decision that found claimant eligible to receive unemployment benefits based on recalculating with just the earnings with her other noneducational employers and that the Davenport Community School District will not be charged for benefits paid is **AFFIRMED**. Benefits are allowed, provided she is otherwise eligible. Employer shall not be liable for benefit charges.



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Darrin T. Hamilton  
Administrative Law Judge

November 9, 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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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.