

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

SYDNEY D MCCOY
Claimant

APPEAL NO. 24A-UI-00797-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/23/23
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available, Work Search Warning

STATEMENT OF THE CASE:

On January 20, 2024, Sydney McCoy (claimant) filed a late appeal from the August 29, 2023 (reference 02) decision that reminded her that she was required to engage in four reemployment activities, including three job applications, each benefit week and that warned she could be disqualified for benefits for future weeks in which she did not meet the work search requirement. The reference 02 decision cited the weekly claim for the week ending August 26, 2023 as the basis for the work search warning decision. After due notice was issued, a hearing was held on February 8, 2024. Ms. McCoy participated. There were three appeal numbers set for a consolidated hearing: 24AUI00797JTT, 24AUI00798JTT, and 24AUI00799JTT. Exhibit A, the online appeal, was received into evidence at the time of the hearing. The administrative law judge took official notice of the following agency administrative records: the reference 02, 03 and 04 decisions, DBRO, KCCO, KFFV, KLOG, NMRO, the July 27, 2023 monetary determination, and relevant IowaWORKS.gov records.

The administrative law judge left the hearing record open through the end of February 8, 2024 for the limited purpose of allowing the claimant to submit additional relevant documents. The claimant submitted the following materials: the September 13, 2023 (reference 01) decision (Exhibit B), the November 21, 2023 (reference 03) decision (Exhibit C), the January 10, 2024 (reference 04) decision (Exhibit D), the reference 04 decision envelopment postmarked January 10, 2024 (Exhibit E), copies of the three appeal hearing notices and corresponding envelopes, and IowaWORKS records (Exhibit F). The administrative law judge received Exhibits B through F into evidence.

ISSUE:

Whether there is good cause to treat the January 20, 2024 appeal as timely appeal from the August 29, 2023 (reference 02) work search warning decision.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Sydney McCoy (claimant) established an original claim for benefits that was effective July 23, 2023. Iowa Workforce Development set the weekly benefit amount at \$604.00.

After Ms. McCoy established the July 23, 2023 original claim, she did not immediately commence making weekly claims.

Ms. McCoy established an "additional claim" for benefits that was effective August 6, 2023 and therefore commenced making weekly claims. Ms. McCoy filed a weekly claim for each of the weeks between August 6, 2023 and October 28, 2023. IWD paid \$604.00 in benefits for each of those weeks.

At the time Ms. McCoy established her claim, she provided IWD with a mailing address. Ms. McCoy has at all relevant times resided on Maple Street in West Des Moines. The mailing address documented in IWD records at the start of the claim included the correct street name and house number, but erroneously indicated the address was in Des Moines at Des Moines zip code 50317. Des Moines and West Des Moines each contain a street named Maple Street. The monetary record mailed to Ms. McCoy at the start of the claimant included the erroneous Des Moines address and was directed to that erroneous address.

Until Ms. McCoy contacted IWD to update the address on September 7, 2023, IWD directed Ms. McCoy's mail to the erroneous Des Moines mailing address.

During the benefit week that ended August 26, 2023, Ms. McCoy applied for three jobs and participated in at least two additional reemployment activities that IWD documented as reemployment activities. Ms. McCoy entered information into the IowaWORKS.gov database regarding the job applications. Ms. McCoy did not certify the accuracy of the information in the IowaWORKS system. For that reason, when Ms. McCoy made her weekly claim for the week ending August 26, 2023, the weekly claim reporting system erroneously documented zero applications and zero reemployment activities.

On August 29, 2023, Iowa Workforce Development mailed an August 29, 2023 (reference 02) decision to Ms. McCoy at the erroneous Des Moines mailing address. The reference 02 decision reminded Ms. McCoy that she was required to engage in four reemployment activities, including three job applications, each benefit week and that warned that she could be disqualified for benefits for future weeks in which she did not meet the work search requirement. The reference 02 decision cited the weekly claim for the week ending August 26, 2023 as the basis for the work search warning decision. The reference 02 decision stated that the decision would become final unless an appeal was postmarked by September 8, 2023 or was received by the Appeals Section by that date. The reference 02 decision included clear and concise appeal instructions.

Ms. McCoy did not receive the August 29, 2023 (reference 02) decision, was unaware of the decision and the September 8, 2023 appeal deadline, and did not file an appeal by the appeal deadline.

On September 13, 2023, IWD mailed a September 13, 2023 (reference 01) decision to Ms. McCoy at the corrected address of record. The reference 01 decision allowed benefits effective August 6, 2023, provided Ms. McCoy was otherwise eligible, based on a determination that Ms. McCoy was able to work and available for work. The reference 01 decision stated that Ms. McCoy's continued qualification for benefits would depend on Ms. McCoy remaining able and available for work.

During the week that ended October 14, 2023, Ms. McCoy did not apply for any jobs. During that week, Ms. McCoy was in the process of moving. During that week, Ms. McCoy participated in an interview with Farm Bureau Financial Service and accepted a job with a start date at the end of October 2023. Ms. McCoy notified her reemployment services worker that she had accepted employment that was to start at the end of October 2023. Ms. McCoy told the reemployment services worker that she would be moving during the week. The reemployment services worker instructed Ms. McCoy to continue making weekly claims until she started in the employment.

When Ms. McCoy made her weekly claim for the week ending October 14, 2023, she reported zero applications and zero reemployment activities. Ms. McCoy certified through the IowaWORKS.gov website that she had made zero applications and had engaged in zero reemployment activities during the week that ended October 14, 2023.

Ms. McCoy returned to applying for jobs and satisfying the reemployment activities requirements during the weeks that ended October 21, 2023 and October 28, 2023.

On November 21, 2023, IWD mailed a November 21, 2023 (reference 03) decision to Ms. McCoy's corrected West Des Moines address of record. The reference 03 decision denied benefits for the week that ended October 14, 2023, based on the deputy's conclusion that Ms. McCoy did not meet the reemployment activities requirement that week and had earlier been warned about the requirement. The reference to the earlier warning was a reference to the August 29, 2023 (reference 02) work search warning decision. The reference 03 decision stated that the decision would become final unless an appeal was postmarked by December 1, 2023 or was received by the Appeals Section by that date. The decision included clear and concise instructions for filing an appeal online, by fax, by email, or by regular mail. Ms. McCoy received the reference 03 decision in a timely manner, prior to the December 1, 2023 deadline for appeal.

In response to receiving the reference 03 decision, Ms. McCoy called Iowa Workforce Development on November 26 and 27, 2023 and spoke to a representative. During the call, the IWD representative told the claimant that the reference 03 decision could lead to later issuance of an overpayment decision, which if issued would be mailed at a later date. The weight of the evidence fails to indicate that the IWD representative stated or implied that Ms. McCoy need take no action in response to the reference 03 disqualification decision. Ms. McCoy did not file an appeal from the reference 03 disqualification decision by the December 1, 2023 deadline.

On January 10, 2024, IWD mailed a reference 04 overpayment decision to Ms. McCoy at the corrected address of record. The reference 04 decision held that Ms. McCoy was overpaid \$604.00 in benefits for the week ending October 14, 2023, due to a November 20, 2023 decision that denied benefits for that week due to an inadequate work search. The reference to the November 20, 2023 decision was a reference to the reference 03 disqualification decision mailed on November 21, 2023. November 20, 2023 was the date on which the reference 03 decision was entered in the IWD computer system. The reference 04 decision included a January 20, 2024 deadline for appeal, which was extended by operation of law to Monday, January 22, 2024.

On January 20, 2024, Ms. McCoy completed and transmitted an online appeal from the reference 04 overpayment decision. The Appeals Bureau received the appeal on January 20, 2024 and treated it as also a late appeal from the reference 02 and 03 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 87124.35(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 87124.35(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 87124.35(2)(c).

The evidence in the record establishes an untimely appeal from the August 29, 2023 (reference 02) work search warning decision. The claimant provides the mailing address at the time the claimant applies for benefits. In other words, the erroneous Des Moines address and zip code would have come from Ms. McCoy at the start of the claim. Though Ms. McCoy was unaware there had been a work search warning decision until her receipt of the November 21, 2023 (reference 03) decision, she thereafter unreasonably delayed filing an appeal to January 20, 2024.

The weight of the evidence fails to support Ms. McCoy's assertion that an IWD representative told her on November 26 or 27, 2023 to wait for something further in the mail from IWD prior to filing an appeal. There would be no reasonable basis for an IWD representative to make such a statement. Ms. McCoy had in hand a decision that clearly indicated an appeal must be filed from the reference 03 decision by December 1, 2023. The weight of the evidence indicates that the wait discussed with IWD during the November 2023 calls pertained only to responding to an anticipated overpayment decision to be issued later, not to the reference 03 disqualification decision or to the earlier reference 02 work search warning decision mentioned in the reference 03 disqualification decision.

The delay between the November 2023 contact with IWD and the January 20, 2024 filing of the appeal was attributable to Ms. McCoy. The delay was unreasonable. Due to the unreasonable delay in filing the appeal, there is not good cause to treat the January 20, 2024 appeal from the overpayment decision as a timely appeal from the August 29, 2023 (reference 02) work search warning decision. See Iowa Code section See Iowa Administrative Code rule 87124.35(2) (regarding good cause attributable to IWD or the USPS and regarding unreasonable delay).

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 August 29, 2023 (reference 02) work search warning decision was untimely. The decision remains in effect.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

February 16, 2024
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.