

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

BRANT J WREDE
Claimant

APPEAL NO. 24A-UI-03783-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 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On April 12, 2024, Brant Wrede (claimant) filed a late appeal from the December 1, 2022 (reference 02) decision that denied benefits for the week that ended November 5, 2022, based on the deputy's conclusion the claimant failed to meet the reemployment activities requirement during that week and had earlier been warned about the requirement. After due notice was issued, a hearing was held on May 1, 2024. Claimant participated. There were five appeal numbers set for a consolidated hearing: 24AUI03782JTT, 24AUI03783JTT, 24AUI03784JTT, 24AUI03785JTT and 24AUI03786JTT. Exhibits A through G were received into evidence. The administrative law judge took official notice of the following agency administrative records: the October 14, 2022 Monetary Record, the reference 01 through 09 decisions, the reference 02, 03 and 04 fact-finding/supplemental documents, DBRO, KCCO, NMRO, KLOG, KFFV and IowaWORKS.gov.

The decision in this matter should be directed to the claimant's Burlington, Iowa address of record, which address IWD has had in its records since on or about April 13, 2023. The decision should not be directed to the claimant's former address in Des Moines, where the claimant most recently resided in December 2022.

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:

Brant Wrede (claimant) established an original claim for benefits that was effective October 9, 2022. At that time, the claimant was residing in Des Moines and provided the Des Moines mailing address to Iowa Workforce Development. IWD set the weekly benefit amount at \$551.00. The claimant made weekly claims for each of the six weeks between October 9, 2022 and November 19, 2022 and received \$551.00 in benefits for each of those weeks.

On October 19, 2022, Iowa Workforce Development mailed the October 19, 2022 (reference 01) decision to the claimant's Des Moines last-known address of record. The reference 01 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 he did not meet the work search requirement. The reference 01 decision cited the weekly claim for the week ending October 15, 2022 as the basis for the work search warning. The reference 01 decision stated the decision would become final unless an appeal was postmarked by October 29, 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. October 29, 2022 was a Saturday and the next working day was Monday, October 31, 2022. The claimant's 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 October 31, 2022 extended appeal deadline.

On December 1, 2022, Iowa Workforce Development mailed the December 1, 2022 (reference 02) decision to the claimant's Des Moines last-known address of record. The reference 02 decision denied benefits for the week that ended November 5, 2022, based on the deputy's conclusion that the claimant did not meet the reemployment activities requirement during that week and had earlier been warned about the requirement. The reference 02 decision stated the decision would become final unless an appeal was postmarked by December 11, 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 11 was a Sunday 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 December 12, 2022 extended appeal deadline.

On December 15, 2022, Iowa Workforce Development mailed the December 15, 2022 (reference 03) decision to the claimant's last-known address of record. The decision followed the claimant's communication with an IWD representative regarding his work search activities. The reference 03 decision denied benefits for the week that ended November 12, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement during that week and had earlier been warned about the requirement. The reference 03 decision stated the decision would become final unless an appeal was postmarked by December 25, 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 25, 2022 was a Sunday and Christmas Holiday. Monday, December 26, 2022 was a legal holiday. The next working day was Tuesday, December 27, 2022. The claimant received the reference 03 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 December 27, 2022 extended appeal deadline.

The reference 02 and 03 decisions had each started with the statement that the decision could result in an overpayment of benefits that the claimant would be required to repay unless the decision was reversed on appeal.

In December 2022, after the reference 03 decision was delivered to the Des Moines address, the claimant relocated with his spouse to Burlington. The claimant did not update his mailing address with IWD. At some point after the claimant moved, he submitted a request to the

United States Postal Service to have his mail forwarded to the new address in Burlington. The claimant is uncertain when he submitted the request to the USPS.

On January 19, 2023, Iowa Workforce Development mailed two overpayment decisions (reference 07 and 08) to the claimant's Des Moines last known address of record. The reference 07 decision held the claimant was overpaid \$551.00 in benefits for the week ending November 5, 2022, due to the December 1, 2022 decision that denied benefits for that week. The reference 08 decision held the claimant was overpaid \$551.00 in benefits for the week ending November 12, 2022, due to the December 15, 2022 decision that denied benefits for that week. Both decisions stated that the decision would become final unless an appeal was postmarked by January 29, 2023 or was received by the Appeals Section by that date. The decisions 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. January 29, 2023 was a Sunday and the next working day was Monday, January 30, 2023. The claimant does not recall receiving the overpayment decisions. Because the claimant had not updated his address with IWD, IWD had continued to direct correspondence to the Des Moines address of record. If the claimant had contacted the USPS prior to the mailing date of the decisions to have his mail forwarded, a reasonable person would expect the decisions to be forwarded and delivered in a timely manner to the Burlington forwarding address. The claimant did not file an appeal from either overpayment decision by the January 30, 2023 extended appeal deadline.

Each decision IWD mailed to the claimant included clear and concise instructions for filing an appeal online, by fax, by email, or by mail, along with contact information for the IWD customer service and the Appeals Bureau.

On April 13, 2023, Iowa Workforce Development mailed the April 13, 2023 (reference 09) tax offset decision to the claimant's address in Burlington. Though the claimant had still not updated his mailing address with IWD, the Iowa Department of Revenue provided the address to IWD in response to the claimant filing of his Iowa income tax return for tax year 2022. The reference 09 decision stated that the claimant's overpayment of unemployment insurance benefits was being withheld from his Iowa Income Tax Refund. The reference 09 decision stated that the decision would become final unless an appeal was postmarked by April 23, 2023 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. April 23, 2023 was a Sunday and the next working day was Monday, April 24, 2023. The claimant received the reference 09 decision in a timely manner, prior to the deadline for appeal. The claimant was confused by the decision, but did not inquire further. The claimant did not appeal the reference 09 decision by the April 24, 2023 extended appeal deadline. The Iowa Department of Revenue withheld the claimant's Iowa Income Tax Refund for the 2022 tax year and applied it toward the combined \$1,102.00 overpayment amount and a \$7.00 administrative fee. An overpayment balance remained after the tax refund offset.

April 2024, the Iowa Department of Revenue sent notice to the claimant that the claimant's Iowa Income Tax Refund for tax year 2023 would be withheld and applied toward the outstanding overpayment balance. The offset procedure had changed to IDOR handling the offset notice, rather than IWD. The claimant contacted the Iowa Department of Revenue about the notice and was referred to Iowa Workforce Development.

On April 12, 2024, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on April 12, 2024 and treated it as a late appeal from the reference 01, 02, 03, 07 and 08 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 December 1, 2022 (reference 02) decision that denied benefits for the week that ended November 5, 2022. The evidence establishes that the claimant received the reference 02 decision in a timely manner, had a reasonable opportunity to file an appeal by the appeal deadline, but unreasonably delayed filing the appeal to April 12, 2024. 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 87124.35(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 December 1, 2022 (reference 02) decision was untimely. The decision that denied benefits for the week that ended November 5, 2022 remains in effect.



James E. Timberland
Administrative Law Judge

May 6, 2024
Decision Dated and Mailed

JET/jkb

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.