

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

SUBRAMANIAN SOMASUNDARAM
Claimant

APPEAL NO. 23A-UI-10498-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/05/23
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 November 7, 2023, Subramanian Somasundaram (claimant) filed a late appeal from the September 20, 2023 (reference 01) decision that denied benefits effective March 26, 2023 based on Iowa Workforce Development determination that the claimant had not provided proof that he was a citizen or that he was legally authorized to work in the United States of America. After due notice was issued, a hearing was held on November 28, 2023. Claimant participated. IWD Integrity Bureau received notice of the hearing but did not appear or participate. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-10499-JT-T. Exhibit A and B were received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: The reference 01 and 02 decisions, the reference 01 supplemental documents and DBRO.

The administrative left the hearing record open for the limited purpose of allowing the claimant the opportunity to submit a clearer copy of his TN visa and passport, and to allow the claimant the opportunity to submit a copy of the mail forwarding order. These materials were received into evidence as Exhibits C, D and E.

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:

Subramanian Somasundaram (claimant) is an electrical engineer, is from India, is a Canadian citizen, and has at all relevant times held a Canadian passport. The claimant has at all relevant times maintained a permanent residence in Canada. The claimant's wife has at all relevant times continued to reside at the permanent residence in Canada.

In April 2022, the claimant commenced employment with an Iowa employer, Planet Forward Energy in Davenport, pursuant to a TN (NAFTA) visa that was effective April 22, 2022. The TN

visa was specific to the employment. The claimant's employment with the Iowa employer ended on February 24, 2023. At the time the employment ended, the claimant was at his home in Canada. Once the claimant's employment with Planet Forward Energy ended, the claimant returned to Davenport on March 1, 2023 to return his work computer to the employer. Once the claimant's employment with Planet Forward Energy ended, the claimant could not legally commence new employment in the United States without first applying for and being approved for a modification of the TN visa.

The claimant established an Iowa original claim for benefits that was effective March 5, 2023. At the time the claimant established he claim for benefits he resided in an apartment on Jersey Ridge Road in Davenport and a secondary residence. The claimant provided the Davenport address as his mailing address at the time he established his claim for benefits. Since the claimant provided the Davenport mailing address, the claimant has not updated his address with Iowa Workforce Development. IWD has directed all correspondence to the Davenport address.

The claimant made weekly claims for each of the 16 weeks between March 26, 2023 and July 29, 2023 and received \$9,488.00 in benefits during that period.

On May 2, 2023, Iowa Workforce Development mailed a letter to the claimant at the Davenport address of record. The record referenced the claimant's statement on his unemployment insurance application that he was neither a citizen nor national of the United States. The letter directed the claimant to provide a copy of his employment authorization documentation to IWD by May 12, 2023. The letter invited the claimant to go to an IWD office to make photocopies of his documentation. The letter warned that failure to report or contact IWD by the May 12, 2023 deadline could result in disqualification for the benefits the claimant had received and for future benefits.

On May 8, 2023, the claimant went to the Davenport IowaWORKS Center. While there, the claimant provided his passport and his TN visa to an IWD representative so that the IWD representative could make copies. The IWD representative made photocopies of the documents and uploaded the copies into an IWD internal messaging system. On May 10, 2023, an IWD representative contacted the United States Citizenship and Immigration Services (USCIS) to initiate a review of the claimant's authorization to work in the United States. On July 21, 2023, the USCIS notified IWD that the claimant was not currently authorized to work in the United States. After IWD paid benefits for the week that ended July 29, 2023, IWD discontinued benefits. The claimant then discontinued making weekly claims.

On August 16, 2023, the claimant traveled to Canada for the purpose of amending his TN visa in connection with a prospective new U.S. employment. The claimant's lease on the Davenport property was set to expire in September 2023.

On September 19, 2023, the claimant submitted an Official Mail Forwarding Change of Address Order to the United States Postal Service to have his mail forwarded from the Davenport address to the claimant's permanent residence in Edmonton, Alberta, Canada.

On September 20, 2023, Iowa Workforce Development mailed the (reference 01) decision to the claimant's Davenport address of record. The reference 01 decision denied benefits effective March 26, 2023 based on Iowa Workforce Development determination that the claimant had not provided proof that he was a citizen or that he was legally authorized to work in the United States of America. The reference 01 decision stated the decision would become final unless an appeal was postmarked by September 30, 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. September 30, 2023 was a Saturday and the next working day was Monday, October 2, 2023. The claimant did not file an appeal by the October 2, 2023 extended appeal deadline.

On October 25, 2023, IWD mailed the October 25, 2023 (reference 02) overpayment decision to the claimant's Davenport address of record. The reference 02 decision held the claimant was overpaid \$9,488.00 in benefits for the 16 weeks between March 26, 2023 and July 29, 2023, due to the September 20, 2023 decision that disqualified the claimant for benefits. The reference 02 decision stated the decision would become final unless an appeal was postmarked by November 4, 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. November 4, 2023 was a Saturday and the next working day was Monday, November 6, 2023. The claimant did not file an appeal by the November 6, 2023 extended appeal deadline.

The claimant asserts the received neither the reference 01 nor reference 02 decision. The claimant relies on his spouse to alert the claimant to correspondence received at the permanent residence in Canada. The claimant has not presented testimony from his spouse. The weight of the evidence indicates that both decisions were delivered to the address in Canada, but that delivery was likely delayed due to the need to forward the decisions from the Davenport mailing address. When the decisions were delivered to the Canada address remains unclear. According to USPS mail forwarding guidelines, forwarding mail from the U.S. to an address in Canada may take up to two weeks. This would mean that September 20, 2023 decision could have been delivered to Canada address as late as October 7, 2023, if one allows for a two to three-day mailing period from Des Moines to the Davenport address prior to the forwarding process. This would also mean the October 25, 2023 overpayment decision could have been delivered as late as November 11, 2023, if one allows for a two to three-day mailing period from Des Moines to the Davenport address prior to the forwarding process.

On November 7, 2023, the claimant emailed an appeal to the Appeals Bureau. The Appeals Bureau received the appeal on November 7, 2023. The claimant did not include and updated address in the appeal. The Appeals Bureau requested an updated address from the claimant. On November 8, 2023, the claimant provided an Edmonton, Alberta Canada mailing address.

On November 14, 2023, the claimant was approved for a new TN visa in connection with a new U.S. employment with Oxford Global Resources.

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 from the September 20, 2023 (reference 01) disqualification decision. The weight of the evidence establishes that the decision was delivered to the claimant's Canada forwarding address on or before October 7, 2023, but that the claimant unreasonably delayed filing his appeal to November 7, 2023. The claimant elected not to present testimony from his spouse and presented insufficient evidence

to rebut the presumption that the USPS forwarded and the Canadian postal service delivered the reference 01 decision on or before October 7, 2023. There is not good cause to treat the appeal filed a month later 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 September 20, 2023 (reference 01) decision was untimely. The decision that denied benefits effective March 26, 2023, based on Iowa Workforce Development determination that the claimant had not provided proof that he was a citizen or that he was legally authorized to work in the United States of America, remains in effect.



James E. Timberland
Administrative Law Judge

December 6, 2023
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.