

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

ROBERT J SAMPLE
Claimant

WALMART INC
Employer

APPEAL NO. 22A-UI-19597-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/25/22
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On December 12, 2022, Robert Sample (claimant) filed a late appeal from the November 2, 2022 (reference 01) decision that denied benefits effective September 25, 2022, based on the deputy's conclusion the claimant was not partially unemployed. After due notice was issued, a hearing was held on January 5, 2023. The claimant participated. The employer provided written notice that the employer waived its appearance at the appeal hearing and included a statement in support of the claimant's request for unemployment insurance benefits. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-19598-JT-T. Exhibit A, the online appeal, and Exhibit 1, the employer's email waiving appearance and supporting the claimant was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the reference 01 and 02 decisions, DBRO, KCCO, KFFV, and the reference 01 fact-finding documents.

ISSUES:

Whether the appeal from the November 2, 2022 (reference 01) decision was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant was able to work and available for work during the two-week period of September 25, 2022 through October 8, 2022.

Whether the claimant was temporarily and/or partially unemployed during the two-week period of September 25, 2022 through October 8, 2022.

Whether the employer's account may be charged for benefits for the two-week period of September 25, 2022 through October 8, 2022.

FINDINGS OF FACT:

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

On November 2, 2022, Iowa Workforce Development mailed the November 2, 2022 (reference 01) decision to the claimant's last-known address of record. The reference 01 decision denied benefits effective September 25, 2022, based on the deputy's conclusion the claimant was not partially unemployed. The reference 01 decision stated the decision would become final unless an appeal was postmarked by November 12, 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. November 12, 2022 was a Saturday and the next working day was Monday, November 14, 2022. The claimant did not receive the reference 01 decision, was unaware of the applicable appeal deadline, and did not file an appeal by the applicable deadline.

On December 8, 2022, Iowa Workforce Development mailed the December 8, 2022 (reference 02) decision to the claimant's address of record. The reference 02 decision held the claimant was overpaid \$798.00 in benefits for the two weeks between September 25, 2022 and October 8, 2022, due to the November 2, 2022 decision that disqualified the claimant for benefits in connection with the able and available determination. The December 8, 2022 decision included a December 18, 2022 appeal deadline.

On December 12, 2022, the claimant called Iowa Workforce Development in response to receiving the December 8, 2022 (reference 02) overpayment decision. At that time, the claimant learned the earlier disqualification decision had been the reference 01 decision. On December 12, 2022, the claimant completed and transmitted an online appeal. The claimant referred in his appeal to a December 8, 2022 decision date, but also referred to the reference 01 decision as the decision from which he appealed. The Appeals Bureau received the appeal on December 12, 2022 and treated it as an appeal from both the reference 01 disqualification decision and the reference 02 overpayment decision.

The claimant is employed by Walmart, Inc. as a full-time freight receiving employee at the employer's Mount Pleasant distribution center. The claimant began the employment in September 2021. The claimant's usual work hours are 5:15 a.m. to 3:15 p.m., Tuesday through Friday. The claimant's hourly wage has at all relevant times been \$18.10.

The claimant established an original claim for benefits that was effective September 15, 2022. Iowa Workforce Development set the weekly benefit amount at \$399.00. Walmart, Inc. is the sole base period employer. The claimant made weekly claims for the weeks that ended October 1 and 8, 2022 and received \$798.00 in benefits for those two weeks.

At the time the claimant established the original claim he reported that he was attached to Walmart, Inc., but that he was off work due to a lack of work. At the time the claimant established his claim for benefits, the claimant had last performed work for the employer on Friday, September 23, 2022. During the week that ended September 24, 2022, the claimant's supervisor notified the claimant he would be laid off during the two weeks between September 25, 2022 and October 8, 2022 due to a lack of available work at the distribution center. The employer recalled the claimant to the full-time employment effective Tuesday, October 11, 2022. During the two weeks the claimant was off work, the claimant remained ready, willing and able to report for his full-time duties at Walmart.

The has provided a written statement in support of the claimant's request for unemployment insurance benefits. The employer states:

Walmart periodically goes through production challenges that may require a temporary reduction in hours for our supply chain associates. Claimant has been laid off from the

company. As such, he/she should be entitled to unemployment benefits if state's eligibility requirements are met.

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 established good cause to deem the December 12, 2022 appeal as a timely appeal from the November 2, 2022 (reference 01) decision. The claimant did not receive the reference 01 decision and was thereby deprived reasonable opportunity to file an appeal by the applicable deadline. Upon learning of the reference 01 decision in connection with his receipt of the December 8, 2022 (reference 02) overpayment, the claimant promptly filed an appeal on December 12, 2022. The late filing of the appeal from the reference 01 decision was attributable to Iowa Workforce Development or the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was timely, the administrative law judge has jurisdiction to enter a ruling on the merits of the appeal from the November 2, 2022 (reference 01) decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.4(3) provides as follows:

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

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual

offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code section 96.1A(37) 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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes the claimant was able to work, available for work, but temporarily unemployed during the two-week period of September 25, 2022 through October 8, 2022. The employer had no work for the claimant during that period and was not at that time providing the same employment as in the base period. The claimant is eligible for benefits for that period, provided the claimant is otherwise eligible. The employer's account may be charged for benefits for the two-week period.

DECISION:

The claimant's appeal from the November 2, 2022 (reference 01) decision was timely. The reference 01 decision is REVERSED. The claimant was able to work, available for work, but temporarily unemployed during the two-week period of September 25, 2022 through October 8, 2022. The claimant is eligible for benefits for that period, provided the claimant is otherwise eligible. The employer's account may be charged for benefits for the two-week period.



James E. Timberland
Administrative Law Judge

January 10, 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>.

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 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.