

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

STEPHANIE DEWILD COOPER
Claimant

APPEAL 24A-UA-03558-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/07/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On March 30, 2024, the claimant, Stephanie DeWild Cooper, filed an appeal from the June 8, 2021 (reference 07) unemployment insurance decision that held the claimant was ineligible for benefits effective January 24, 2021, because Iowa Workforce Development's (IWD) records indicated that the claimant had not made adequate arrangements for childcare and she was unavailable for work. After due notice was issued, a telephone hearing was held on April 24, 2024. Appeal numbers 24A-UI-03558-PT-T, 24A-UI-03559-PT-T, and 24A-DUA-00004-PT-T were heard together and created one record. The claimant participated personally. The Department participated through Benefit Payment Control Program Manager Daniel Nonan. The Department's Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant's appeal is timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Iowa Workforce Development (IWD) mailed the reference 07 unemployment insurance decision to the claimant's address of record on June 8, 2021. The claimant recalls receiving the decision. However, she testified that she did not have access to her mailbox in early-June 2021 because she had turned in her house keys to the military base where she lived while maintenance work was being done on her home. The claimant said her keys were returned to her on June 19, 2021, at which point she was able to obtain the decision.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 18, 2021. The appeal was not filed until March 30, 2024, as evidenced by the postmark on the envelope, which is after the date noticed on the disqualification decision. The claimant explained that the appeal was untimely because she did not have access to her mailbox in early-June 2021. The claimant also stated that after she read the decision, she called IWD's customer service number and an employee told her that she was not allowed to file an appeal after the deadline. When asked at the hearing, the claimant was unable to recall the

name of the IWD employee with whom she spoke or the exact date she made the phone call. Although the claimant received two other decisions within the same year, one involving an overpayment stemming from the reference 07 decision and the other finding the claimant was ineligible for PUA benefits, the claimant did not appeal any of the decisions until March 30, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

It is the duty of the administrative law judge as the trier of fact in this case to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience, I am skeptical of the claimant's statements that an IWD employee told her that she was not allowed to appeal the decision after the appeal deadline. The alleged advice goes against IWD's training, the claimant was unable to recall the name of the employee or the date of the phone call, and, as the claimant filed her appeal nearly four years after the appeal deadline, the testimony appeared self-serving and of questionable reliability.

Taken together, the weight of the evidence indicates that the June 8, 2021 (reference 07) unemployment insurance decision was delivered to the claimant's address of record in a timely manner, prior to the June 18, 2021, appeal deadline. However, because the claimant was either not regularly checking her mail or because she temporarily lost access to her mailbox key, she did not review the decision until after the deadline. The claimant then waited nearly four years to appeal the decision. The claimant's nearly four-year delay was not due to agency error or misinformation or delay of the United States Postal Service pursuant to Iowa Admin. Code rule 871-24.35(2). No other good cause reason has been established for the delay. The claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal or to disturb the decision from which the claimant appeals.

DECISION:

The June 8, 2021, (reference 07) unemployment insurance decision that denied the claimant benefits effective January 24, 2021, because the claimant was not able to and available for work is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.



Patrick B. Thomas
Administrative Law Judge

May 6, 2024
Decision Dated and Mailed

PBT/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:

**Iowa Employment Appeal Board
6200 Park Avenue 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> 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 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.