

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NEFI TORRES**  
Claimant

**APPEAL 21A-UI-14288-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/30/21  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timely Appeal  
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year

**STATEMENT OF THE CASE:**

Nefi Torres, the claimant/appellant, filed an appeal from the April 8, 2021, (reference 01) unemployment insurance decision that concluded he was not eligible for REGULAR unemployment insurance (UI) benefits because of a lack of at least eight times the prior claim year's weekly benefit amount (WBA) in insured wages during or after the prior claim year. A telephone hearing was held on August 18, 2021. Mr. Torres was properly notified of the hearing date and time. Mr. Torres participated and testified. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is Mr. Torres' appeal filed on time?  
Did Mr. Torres earn insured wages of at least eight times the prior claim year's WBA during or after the previous benefit year to become eligible for a second benefit year?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Torres at the correct address on April 8, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by April 18, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. April 18, 2021 was a Sunday; therefore, the deadline was extended to Monday, April 19, 2021. Mr. Torres did receive the decision in the mail.

IWD issued a different decision, dated June 15, 2021, that also denied benefits. Mr. Torres received that decision in the mail. Mr. Torres filed an appeal online on June 17, 2021. The appeal was received by Iowa Workforce Development on June 17, 2021.

The administrative law judge further finds: Mr. Torres established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the Mr. Torres' weekly

benefit amount at \$481.00. Mr. Torres filed his claim because he was laid off from HOQ LLC in March 2020. Mr. Torres received regular unemployment insurance (UI) benefits, and Federal Pandemics Unemployment Compensation (FPUC) benefits in connection with the claim. The claim year expired on March 21, 2021.

Mr. Torres established a new original claim and a new claim year that was effective March 21, 2021. Iowa Workforce Development sent Mr. Torres a monetary record that acknowledged his base period wages and that set his weekly benefit amount at \$267.00. Mr. Torres worked at Irena's restaurant from about early April 2021 through early August 2021. He worked as a full-time server/bartender. Mr. Torres currently works at Mid Iowa Electric as a full-time electrician apprentice. He began working for this employer in about mid-June 2021. The administrative record shows \$0.00 in insured wages since he was laid off in March 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the Mr. Torres' appeal was filed on time.

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).

Mr. Torres did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. When Mr. Torres learned that he had been denied benefits, he filed an appeal. Mr. Torres' appeal was filed on time.

The administrative law judge further concludes that Mr. Torres is not eligible to receive REGULAR unemployment insurance benefits during the subsequent benefit year.

Iowa Code section 96.4(4)(a) and (c) provide:

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

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

[Emphasis added.]

Iowa Code Section 96.1A(14), (16) and (26) provides

14. "Employer" means:

a. For purposes of this chapter with respect to any calendar year after December 31, 2018, any employing unit which in any calendar quarter in either the current or preceding calendar year paid wages for service in employment.

16. "Employment".

a. Except as otherwise provided in this subsection, "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied.

...

26. "Insured work" means employment for employers.

Qualifying wages are those subject to contribution under a state employment security law or wages subject to tax under the federal Unemployment Tax Act. See Iowa Admin. Code r. 871-24.1(131), (132).

Mr. Torres has not met the eight-times-weekly-benefit-amount minimum earnings requirement and, therefore, is not eligible for benefits in connection with the second benefit year that was effective March 21, 2021. Mr. Torres established a claim in an earlier benefit year and received benefits in connection with that claim. In order to meet the eight-times-weekly-benefit-amount minimum earnings requirement, Mr. Torres would need to have been employed and to have been paid eight times his \$481.00 weekly benefit amount subsequent to being laid off in March 2020. That amount would be \$3,848.00. Because Mr. Torres has not been paid at least \$3,848.00 in wages from insured work during the relevant period, he is not eligible for benefits in connection with the second benefit year that was effective March 21, 2021.

**DECISION:**

Mr. Torres' appeal was filed on time. The April 8, 2021, (reference 01) decision is affirmed. Mr. Torres did not meet the eight-times-weekly-benefit-amount minimum earnings requirement to be monetarily eligible for benefits in connection with a second benefit year. Mr. Torres is not eligible for benefits in connection with the benefit year that started on March 21, 2021.



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Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

August 23, 2021  
Decision Dated and Mailed

dz/mh

**NOTE TO MR. TORRES:**

- Your current benefit year ends on March 20, 2022.
- **If you earn at least \$3,868.00 between now and the end of your current benefit year**, let Iowa Workforce Development (IWD) know since **you may become eligible for REGULAR UI benefits**.
- You can let IWD know by emailing [uicclaimshelp@iwd.iowa.gov](mailto:uicclaimshelp@iwd.iowa.gov) Include the following information in your email:
  - Your name,
  - Your address,
  - The last four numbers of your Social Security number, and
  - Evidence (a picture or an attachment) of your earnings.