

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

VALDOISE M MWANABIELE
Claimant

APPEAL NO. 22A-UI-17392-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/22/22
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.2(1)(e) – Failure to Report as Directed

STATEMENT OF THE CASE:

On September 23, 2022, Valdoise Mwanabiele (claimant) filed a late appeal from the August 16, 2022 (reference 09) decision that denied benefits effective August 14, 2022, based on the deputy's conclusion the claimant failed to report for a meeting that week as directed and, therefore, did not meet the availability requirements. After due notice was issued, a hearing was held on October 19, 2022. Claimant participated. French-English interpreter Moussa Sarr (10761) of CTS Language Link assisted with the hearing. There were 12 appeal numbers set for a consolidated hearing: 22A-UI-17388-JT-T, 22A-UI-17389-JT-T, 22A-UI-17390-JT-T, 22A-UI-17391-JT-T, 22A-UI-17392-JT-T, 22A-UI-17393-JT-T, 22A-UI-17394-JT-T, 22A-UI-17395-JT-T, 22A-UI-17396-JT-T, 22A-UI-17397-JT-T, 22A-UI-17398-JT-T, and 22A-UI-17399-JT-T. Exhibit A, consisting of a fax cover sheet and appeal forms pertaining to the reference 14, 16 and 16 decisions, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development agency administrative records: the reference 02 and reference 06 through 17 decisions, DBRO, KCCO, KFFV, and the work search information the claimant uploaded to IowaWORKS.gov

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:

Valdoise Mwanabiele (claimant) established an original claim for benefits that was effective May 22, 2022. The claimant is a high-school graduate. The claimant is a native French speaker and can read French. The claimant has very limited English language skills and cannot read English. The claimant immigrated to the United States five years ago. The claimant has at all relevant times resided in a Cedar Rapids apartment with her adult sister, who is fluent in English. The claimant's sister has at all relevant times been available to assist the claimant with reading and understanding Iowa Workforce Development documents written in English. The

claimant has received in a timely manner each of the decisions Iowa Workforce Development mailed to her. The claimant reviewed each of those documents with her sister's assistance. Each decision included appeal instructions. Each decision included an IWD customer service telephone number and Appeals Bureau contact information. The claimant did not respond to any decision entered in connection with her claim until she received the reference 14, 15 and 16 overpayment decisions that were mailed to her on September 16, 2022. The overpayment decisions prompted the appeal. On September 23, 2022, the claimant went to the Cedar Rapids IowaWORKS Center and, with her sister's assistance, completed three appeal forms pertaining to those three overpayment decisions. The claimant delivered the completed appeal forms to the IWD staff, who faxed the appeals to the Appeals Bureau on September 23, 2022. The Appeals Bureau received the appeal packet, four pages, on September 23, 2022 and treated is an appeal from the reference 02 and reference 06 through 17 decisions.

On June 14, 2022, Iowa Workforce Development mailed the June 14, 2022 (reference 02) decision to the claimant's Cedar Rapids last-known address of record. The reference 02 decision reminded the claimant she was required to engage in four reemployment activities, including three job applications, each benefit week and that warned the claimant she could be disqualified for benefits for future weeks in which the claimant did not meet the work search requirement. The reference 02 decision cited the claimant's weekly claim for the week that ended June 11, 2022 as the basis for the work search warning decision. The reference 02 decision stated the decision would become final unless an appeal was postmarked by June 24, 2022 or was received by the Appeals Section by that date. 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 appeal deadline or at any point prior to September 23, 2022.

On August 16, 2022, Iowa Workforce Development mailed the August 16, 2022 (reference 06) decision to the claimant's Cedar Rapids last-known address of record. The reference 06 decision denied benefits for the week that ended July 23, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement that week and had earlier been warned about the requirement. The reference 06 decision stated the decision would become final unless an appeal was postmarked by August 26, 2022 or was received by the Appeals Section by that date. The claimant received the reference 06 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 appeal deadline or at any point prior to September 23, 2022.

Also on August 16, 2022, Iowa Workforce Development mailed the August 16, 2022 (reference 09) decision to the claimant's Cedar Rapids last-known address of record. The reference 09 decision denied benefits effective August 14, 2022, based on the deputy's conclusion the claimant failed to report for a meeting that week as directed and, therefore, did not meet the availability requirements. The reference 09 decision stated the decision would become final unless an appeal was postmarked by August 26, 2022 or was received by the Appeals Section by that date. The claimant received the reference 09 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 appeal deadline or at any point prior to September 23, 2022.

On August 22, 2022, Iowa Workforce Development mailed the August 22, 2022 (reference 07) decision to the claimant's Cedar Rapids last-known address of record. The reference 07 decision denied benefits for the week that ended July 30, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement that week and had earlier been warned about the requirement. The reference 07 decision stated the decision would become final unless an appeal was postmarked by September 1, 2022 or was received

by the Appeals Section by that date. The claimant received the reference 07 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 appeal deadline or at any point prior to September 23, 2022.

Also on August 22, 2022, Iowa Workforce Development mailed the August 22, 2022 (reference 11) decision to the claimant's last-known address of record. The reference 11 decision held the claimant was overpaid \$531.00 in benefits for the week ending July 23, 2022, due to the August 16, 2022 decision that denied benefits for that week due to an inadequate work search. The reference 11 decision stated the decision would become final unless an appeal was postmarked by September 1, 2022 or was received by the Appeals Section by that date. The claimant received the reference 11 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 appeal deadline or at any point prior to September 23, 2022.

On August 23, 2022, Iowa Workforce Development mailed the August 23, 2022 (reference 08) decision to the claimant's Cedar Rapids last-known address of record. The reference 08 decision denied benefits for the week that ended August 6, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement that week and had earlier been warned about the requirement. The reference 08 decision stated the decision would become final unless an appeal was postmarked by September 2, 2022 or was received by the Appeals Section by that date. The claimant received the reference 08 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 appeal deadline or at any point prior to September 23, 2022.

On September 6, 2022, Iowa Workforce Development mailed the September 6, 2022 (reference 10) decision to the claimant's Cedar Rapids last-known address of record. The reference 10 decision denied benefits for the week that ended August 13, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement that week and had earlier been warned about the requirement. The reference 10 decision stated the decision would become final unless an appeal was postmarked by September 16, 2022 or was received by the Appeals Section by that date. The claimant received the reference 10 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 appeal deadline or at any point prior to September 23, 2022.

On September 12, 2022, Iowa Workforce Development mailed the September 12, 2022 (reference 12) decision to the claimant's Cedar Rapids last-known address of record. The reference 12 decision denied benefits for the week that ended August 20, 2022, based on the deputy's conclusion the claimant did not meet the reemployment activities requirement that week and had earlier been warned about the requirement. The reference 12 decision stated the decision would become final unless an appeal was postmarked by September 22, 2022 or was received by the Appeals Section by that date. The claimant received the reference 12 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 appeal deadline. The claimant instead filed her appeal on September 23, 2022.

On September 16, 2022, Iowa Workforce Development mailed the reference 14, 15 and 16 overpayment decisions to the claimant. The reference 14 decision held the claimant was overpaid \$531.00 in benefits for the week ending July 30, 2022, due to an August 20, 2022 decision that denied benefits for that week due to an inadequate work search. The reference 15 decision held the claimant was overpaid \$531.00 in benefits for the week ending August 6, 2022, due to an August 23, 2022 decision that denied benefits for that week due to an inadequate work search. The reference 16 decision held the claimant was overpaid \$531.00 in

benefits for the week ending August 13, 2022, due to a September 5, 2022 decision that denied benefits for that week due to an inadequate work search. The three overpayment decisions included a September 26, 2022 deadline for appeal and prompted the September 23, 2022 appeal.

On September 19, 2022, Iowa Workforce Development mailed the reference 17 decision to the claimant's Cedar Rapids address of record. The reference 17 decision held the claimant was overpaid \$531.00 in benefits for the week ending July 2, 2022, due to a June 23, 2022 decision that disqualified the claimant for benefits due to a failure to appear as directed for a meeting. The reference 17 decision included a September 29, 2022 deadline for appeal. Though the claimant did not draft or submit an appeal specific to this decision, the Appeals Bureau elected to treat the claimant's September 23, 2022 appeal as also an appeal from the reference 17 decision.

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 a September 23, 2022 untimely appeal from the August 16, 2022 (reference 09) decision. The claimant received the reference 09 decision in a timely manner. Despite the language issue, the claimant had a reasonable opportunity to file an appeal by the August 26, 2022 appeal deadline. The claimant had the assistance of her bilingual sister/roommate at all relevant times. The claimant demonstrated the ability to file a timely appeal when she filed the September 23, 2022 appeal from the September 16, 2022 (reference 14, 15 and 16) overpayment decisions. The claimant unreasonably delayed filing her appeal from the August 16, 2022 (reference 09) decision. 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 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant 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 August 16, 2022 (reference 09) decision was untimely. The decision that denied benefits effective August 14, 2022, based on the deputy's conclusion the claimant failed to report for a meeting that week as directed and, therefore, did not meet the availability requirements, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

October 21, 2022
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.