

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

DOUGLAS D GUSTAFSON

Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 24A-UI-02361-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/03/23

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

Iowa Admin Code Rule 87124.1(e) & 24.23(11) – Failure to Report as Directed

STATEMENT OF THE CASE:

On February 26, 2023, Douglas Gustafson (claimant) filed a late appeal from the January 25, 2024 (reference 04) decision that denied benefits effective January 14, 2024, based on the deputy's conclusion that Mr. Gustafson failed to report as directed during that week and therefore did not meet the availability requirement effective January 14, 2024. After due notice was issued, a hearing was held on March 26, 2024. Mr. Gustafson participated. There were three appeal numbers set for a consolidated hearing: 24AUI02360JTT, 24AUI02361JTT and 24AUI02362JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following agency administrative records: the reference 02, 04 and 05 decisions, DBRO, KCCO and KFFV.

ISSUES:

Whether the appeal from the January 25, 2024 (reference 04) decision 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:

Douglas Gustafson (claimant) established an original claim for benefits that was effective December 3, 2023. Iowa Workforce Development set the weekly benefit amount at \$582.00. Mr. Gustafson did not immediately begin making weekly claims. Mr. Gustafson reopened the claim for benefits during the week of December 17, 2023 and then commenced making weekly claims. Mr. Gustafson made weekly claims for the three weeks ending December 23 and December 30, 2023, and the week ending January 6, 2024. Mr. Gustafson then discontinued his claim.

During the week of December 24-30, 2023, Mr. Gustafson applied for four jobs. When Mr. Gustafson made his weekly claim for the week that ended December 30, 2023, he

mistakenly answered that he was not able and/or not available to work. That response to the weekly claim question flagged the claim and prompted a fact-finding interview.

On January 12, 2024, IWD mailed a notice to Mr. Gustafson's Harcourt, Iowa address of record that directed Mr. Gustafson to be available at his phone number of record for a fact-finding interview telephone call set for January 19, 2024 at 2:15 p.m. Mr. Gustafson received the notice in a timely manner. Mr. Gustafson was working in a quarry at the time of the fact-finding interview call and did not have reception to receive the call. Mr. Gustafson is aware that the working conditions have this impact on his cell phone reception. The deputy called Mr. Gustafson at the time of the fact-finding interview and left a voicemail message. Mr. Gustafson reviewed the call later in the day.

On January 25, 2024, Iowa Workforce Development mailed two disqualification decisions to Mr. Gustafson at his Harcourt, Iowa address of record. The reference 02 decision denied benefits for the week ending December 30, 2023, based on the weekly claim response that indicated Mr. Gustafson was not able and/or not available for work during that week. The reference 04 decision denied benefits for the period beginning January 14, 2024, based on Mr. Gustafson's failure to appear as directed for the January 19, 2024 telephone fact-finding interview. Each decision stated that the decision would become final unless an appeal was postmarked by February 4, 2024 or was received by the Appeals Section by that date. Each decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. February 4, 2024 was a Sunday and the next working day was Monday, February 5, 2024. Mr. Gustafson received each decision in a timely manner, prior to the deadline for appeal. Mr. Gustafson did not file an appeal from either decision by the February 5, 2024 extended appeal deadline.

On February 16, 2024, IWD mailed a reference 05 overpayment decision to Mr. Gustafson's Harcourt address of record. The reference 05 decision held that Mr. Gustafson was overpaid \$582.00 in benefits for the week that ended December 30, 2023, based on the earlier decision that denied benefits for that week in connection with the able and available determination. The overpayment decision included a February 26, 2024 appeal deadline. Mr. Gustafson received the overpayment decision in a timely manner.

On Saturday, February 24, 2024, Mr. Gustafson drafted an appeal letter concerning the reference 05 overpayment decision. Later that day, after the final mail collection for the day, Mr. Gustafson deposited his appeal letter in the mailbox located inside the Harcourt Post Office. The United States Postal Service processes Harcourt correspondence in Des Moines. The correspondence bears a February 26, 2024 Des Moines postmark.

When the Appeals Bureau received the mailed appeal, the Appeals Bureau treated the appeal from the overpayment decision as also a late appeal from the earlier reference 02 and reference 04 disqualification decisions.

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 87124.35(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 87124.35(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 87124.35(2)(c).

The evidence in the record establishes an untimely appeal from the January 25, 2024 (reference 04) disqualification decision. Mr. Gustafson received the reference 04 decision in a timely manner, had a reasonable opportunity to file an appeal by the extended February 5, 2024 appeal deadline, but unreasonably delayed filing the appeal until after he received the February 16, 2024 overpayment decision. The appeal was filed on February 26, 2024, as indicated by the postmark on the mailed appeal. Because the appeal was deposited in the mail on a Saturday, after the final mail collection for the day, Monday, February 26, 2024 would have been the earliest date the correspondence could be postmarked. The late filing of the appeal was attributable to Mr. Gustafson's delayed action and not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 87124.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the disqualification 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 January 25, 2024 (reference 04) decision was untimely. The decision that denied benefits effective January 14, 2024, based on the failure to report remains in place. However, because the claimant discontinued the claim after the week that ended January 6, 2024, the reference 04 decision is moot or of no effect.



James E. Timberland
Administrative Law Judge

March 27, 2024
Decision Dated and Mailed

scn

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.