

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

FRANCISCO J PEREZ RIOS
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 24A-UI-03747-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/14/24
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(11) – Able & Available – Failure to Report
Iowa Admin. Code r. 871-24.2(1)(e) – Able & Available – Report as Directed by Department
Iowa Admin. Code r. 871-24.3(2) – Able & Available – Identity Verification

STATEMENT OF THE CASE:

On April 8, 2024, claimant Francisco J. Perez Rios filed an appeal from the March 6, 2024 (reference 03) unemployment insurance decision that allowed benefits effective March 3, 2024, based upon a determination that claimant initially failed to provide his proof of United States work authorization but subsequently did so. The parties were properly notified of the hearing. A telephonic hearing was held at 12:00 p.m. on Monday, May 13, 2024. Appeal numbers 24A-UI-03745-LJ-T, 24A-UI-03746-LJ-T, and 24A-UI-03747-LJ-T were heard together and created one record. Claimant Francisco J. Perez Rios participated. Spanish/English interpreter Melanie (ID number 16934) provided interpretation for the hearing. The administrative law judge took official notice of administrative record documentation including a letter mailed to claimant regarding Iowa Workforce Development's ("IWD") need to obtain proof of claimant's citizenship; claimant's unemployment insurance claim records for his January 14, 2024 claim year; and the February 9, 2024; March 4, 2024; and March 6, 2024 unemployment insurance decisions.

ISSUES:

Whether claimant was able to and available for work.
Whether claimant failed to report as directed by a department representative.
Whether claimant timely provided verification of work authorization.

FINDINGS OF FACT:

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

Claimant opened a claim for unemployment insurance benefits with an effective date of January 14, 2024. Shortly after claimant opened his claim, IWD issued a letter requesting that he submit documentation proving he was a U.S. citizen and legally authorized to work. This letter included a submission deadline of February 5, 2024. Claimant submitted his documentation in response to the letter with the help of friends who reside at his mailing address.

Claimant believes IWD did not get the submission he and his friends made in February, because his claim remained locked. He had contact with the agency through a deputy, Anna, who directed him to provide his documents a second time. On March 4, claimant sent in his documentation again. This time, claimant directed the documentation to “Anna.” This documentation was received. On March 6, 2024, IWD issued the reference 03 decision allowing benefits effective March 3, 2024, because claimant had provided the requested documentation. Around the same time, IWD issued an overpayment decision (reference 02) related to benefits claimant received before IWD received his documentation.

The reference 03 decision was mailed to claimant’s address of record on King Avenue on February 9, 2024. Claimant did not receive this decision in a timely manner because he does not live at the address where it was sent. He did not have a permanent address at the time, so he entrusted his friends with his mail. His friends went on an extended vacation, causing claimant to lose access to his mail until mid-March 2024. Once claimant obtained his mail, he went to the IWD main office on Grand Avenue to try and obtain assistance. They sent him to the IowaWorks office on Army Post Road to get assistance. When claimant went to that office, staff sent claimant to a different office – at Park Fair Mall. Claimant ultimately received help from the Park Fair Mall office staff. Claimant filed his appeal on April 8, 2024. Claimant does not read, write, or speak English, further impeding his ability to navigate the process.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant provided timely verification of his citizenship.

The first issue is whether claimant filed a timely appeal. 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 Date 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 parties have a duty to appeal representatives' decisions within the time allotted by statute; 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 claimant did not have an opportunity to appeal the fact-finder's decision prior to the deadline because the decision was not received before that deadline. Claimant did not have effective notice of the decision until he received it and then made it to the Park Fair Mall IowaWorks office. The claimant filed an appeal within a reasonable period of time after discovering the disqualification and his right to appeal it. Therefore, the appeal shall be accepted as timely.

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. 871 IAC 24.23(11).

Iowa Admin. Code r. 871-24.2 provides in relevant part:

Filing a claim for unemployment insurance benefits...

Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitation. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, or union membership card or supply personally identifying information.

Iowa Admin. Code r. 871-24.3 provides:

A claim will not become valid until the identity of the claimant has been verified by the department.

- (1) Upon the filing of a claim, notification shall be provided to the claimant if the claimant's identity was not verified.
- (2) If the agency is unable to verify the claimant's identity in the claim application, the claimant must provide approved documents. Approved documents must include at least one document containing a social security number. The department shall determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.
- (3) The claimant's identity will not be considered verified until approved documents have been provided. The claim shall remain locked from issuance of benefits until the claimant has provided the approved documents to verify identity.
- (4) After filing a claim application, the claimant shall not be eligible for benefits for any week until approved documents are provided to verify identity.
- (5) Approved documents must be provided or postmarked by Saturday at 11:59 p.m. of the week in which the approved documentation is due, and the claim shall be unlocked for all weeks following the most recent effective date of the claim application.
- (6) If required documents are provided in any subsequent weeks following the due date, the claimant shall be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

Iowa Admin. Code r. 871-24.23(11) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

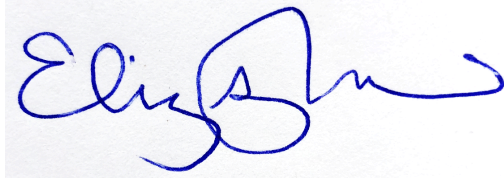
- (11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

In this case, claimant attempted to provide his documentation to IWD as soon as he knew the agency required it. Once he had determined the agency never received his documents, he re-submitted the documentation. Claimant had no way of knowing the weekly continued claims would not be paying out or that the documents he initially mailed were not received. It was not until the claimant called the agency and spoke with Anna that he learned the claim was locked because the documents he submitted never reached the agency. Claimant then promptly took action and provided the necessary documents a second time.

Therefore, benefits are allowed effective January 14, 2024, provided claimant is otherwise eligible.

DECISION:

The March 6, 2024 (reference 03) unemployment insurance decision is modified in favor of the claimant. Claimant provided timely, prompt documentation to IWD and has been able and available as required by the law. Benefits are allowed effective January 14, 2024, provided claimant is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

May 20, 2024
Decision Dated and Mailed

lj/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:

**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.