

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

DENISA PAJAZETOVIC

Claimant

APPEAL NO. 23A-UI-10113-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/17/23

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Administrative Code rule 871-24.3(2) – Verification of Identity

Iowa Administrative Code Rules 871-24.2(1)(e) & 871-24.23(11) – Failure to Report as Directed

STATEMENT OF THE CASE:

On October 24, 2023, Denisa Pajazetovic (claimant) filed a late appeal from the October 4, 2023 (reference 01) decision that allowed benefits for the period beginning October 1, 2023, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant had been disqualified for benefits due to a failure to prove her identity but had since then provided documents to verify her identity. One effect of the reference 01 decision was to deny benefits for the two-week period of September 17, 2023 through September 30, 2023. After due notice was issued, a hearing was held on November 29, 2023. Ms. Pajazetovic participated and presented additional testimony through Suada Mujic. Iowa Workforce Development submitted proposed exhibits in lieu of otherwise participating in the hearing. Bosnian-English interpreter Suzanna Dobrosavljevic assisted with the hearing. Exhibits 1 through 8 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01 decision, DBRO, KCCO and WAGEA.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant failed to provide timely identification verification and, therefore, did not meet the availability requirement during the period of September 17, 2023 through September 30, 2023.

FINDINGS OF FACT:

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

Denisa Pajazetovic (claimant) established an original claim for benefits that was effective September 17, 2023. The claimant made weekly claims for the weeks ending September 23, 2023 and September 30, 2023.

The claimant's first language is Bosnian. English is the claimant's second language. The claimant has significant English language skills, but is not fluent in English.

At the time the claimant made her initial application for benefits, the claimant did not observe a request to upload documents to verify her identity.

On September 19, 2023, Iowa Workforce Development mailed an ID verification letter to the claimant's Waterloo address of record. The letter directed the claimant to submit documents to verify her identity by September 25, 2023 or risk delay or disqualification for benefits. The letter specified the acceptable ID verification documents and the means by which the claimant was to submit the required documentation. The claimant did not receive the ID verification letter.

The claimant had established her claim for benefits in response to a temporary layoff from her full-time employment at The Powers Manufacturing. The layoff went to effect after the claimant completed her shift on Friday September 15, 2023. The employer had no work for the claimant during the week that ended September 23, 2023. The employer had no work for the claimant on Monday, September 25, or Tuesday, September 26, 2023. The claimant remained ready, able and willing to report for work during the period of the temporary layoff. The claimant was recalled to the employment on Wednesday, September 27, 2023. The claimant worked 24 hours on Wednesday through Friday of that week. The claimant's hourly wage is \$17.10. The claimant earned \$410.00 in wages during the week that ended September 30, 2023.

On October 2, 2023, the claimant learned about the unemployment insurance ID verification requirement through discussion with coworkers who had received ID verification letters.

On October 2, 2023, the claimant went to the Waterloo IowaWORKS Center and presented her Iowa Real driver's license and her Social Security card as proof of her identity.

On October 4, 2023, Iowa Workforce Development mailed the October 4, 2023 (reference 01) decision to the claimant's Waterloo last-known address of record. The reference 01 decision allowed benefits for the period beginning October 1, 2023, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant had been disqualified for benefits due to a failure to prove her identity but had since then provided documents to verify her identity. However, the reference 01 decision effectively denied benefits for the two-week period of September 17, 2023 through September 30, 2023. The reference 01 decision stated the decision would become final unless an appeal was postmarked by October 14, 2023 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. October 14, 2023 was a Saturday and the next working day was Monday, October 16, 2023. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal.

Upon receipt of the reference 01 decision, the claimant went to the IowaWORKS Center in the hope of gaining assistance from the bilingual representative who had helped her apply for unemployment insurance benefits. Upon entering the Center, the claimant was greeted by two IWD representatives, one male and one female. The claimant stated she needed help with the decision and asked for the bilingual representative. The female IWD representative told the claimant that the bilingual representative was not available. The female IWD representative took the claimant's copy of the reference 01 decision into her possession, reviewed the document, and then told the claimant that the claimant did not need to do anything in response to the decision but wait. Based on the IWD representative's guidance, the claimant did not take further steps to file an appeal by the October 16, 2023 extended appeal deadline.

When the claimant continued to not receive benefits for the period of the temporary layoff, the claimant returned to the IowaWORKS Center on October 24, 2023 and was at that time able to speak with the bilingual representative. With the assistance of the IWD representative, the claimant completed and transmitted an online appeal from the reference 01 decision. The Appeals Bureau received the appeal on October 24, 2023.

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 good cause to treat the claimant's October 24, 2023 late appeal as a timely appeal. The late filing of the appeal was attributable to the IWD representative erroneously instructing the claimant that she did not need to take further action on the appeal. The claimant reasonably relied upon that guidance. See Iowa Administrative Code rule 871-24.35(2) (regarding good cause attributable to IWD error or misinformation). Because the appeal was timely, the administrative law judge has jurisdiction to rule on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that: 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Administrative Code rule 871-24.3(2) provides as follows:

(2) The claim will not become valid until the identity has been verified by the department. If the claimant has not provided the information to verify identity within seven calendar days of filing of a claim, the claim will be voided. The claimant must submit another claim for benefits. The effective date of the claim would be the Sunday of the week the identity was verified.

In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. Iowa Administrative Code rule 871-24.2(1)(e). 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. Iowa Administrative Code rule 871-24.23(11).

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

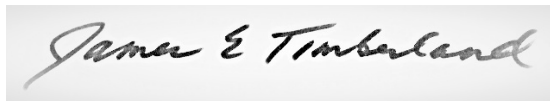
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The evidence in the record establishes the claimant was able to work and available for work during the two weeks between September 17, 2023 and September 30, 2023. During the week that ended September 23, 2023, the claimant was temporarily laid off. During the week that ended September 30, 2023, the claimant was partially unemployed insofar as she worked the reduced hours the employer had available for her and her earned wages did not exceed her weekly benefit amount plus \$15.00. The evidence establishes good cause to treat the claimant's October 2, 2023 submission of ID verification documents as a timely and satisfactory response to the ID verification letter/agency directive. The claimant did not receive the ID verification letter that IWD mailed on September 19, 2023. As soon as the claimant became aware of the of ID verification issue through discussion with similarly situated coworkers, the claimant promptly went to IWD and provided documentation to verify her identity. No disqualification shall enter in connection with the ID verification issue.

DECISION:

The claimant's appeal from the October 4, 2023 (reference 01) decision was timely. The reference 01 decision is MODIFIED in favor of the claimant as follows. The claimant was able to work and available for work during the two weeks between September 17, 2023 and September 30, 2023. During the week that ended September 23, 2023, the claimant was temporarily laid off. During the week that ended September 30, 2023, the claimant was partially unemployed. There is good cause to treat the claimant's October 2, 2023 submission of ID verification documents as a timely and satisfactory response to the ID verification letter/agency directive. No disqualification shall enter in connection with the ID verification issue. The claimant is eligible for benefits for the period beginning September 17, 2023, provided she is otherwise eligible.



James E. Timberland
Administrative Law Judge

December 7, 2023
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
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.