

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

CARIN A HORNE

Claimant

APPEAL NO. 23A-UI-07335-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE COMMUNITY COLLEGE

Employer

OC: 12/25/22

Claimant: Respondent (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On July 27, 2023, the employer filed a late appeal from the January 19, 2023 (reference 01) decision that allowed benefits to the claimant for the period beginning December 25, 2022, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant was still employed with Hawkeye Community College, was on a short-term layoff, and was deemed able and available for work during the layoff. After due notice was issued, a hearing was held on August 11, 2023. Carin Horne (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Lynn Duit, Associate Director of Human Resources Services, represented the employer. Employer Exhibits 1 through 3 and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the following agency administrative records: the January 19, 2023 (reference 01) decision, DBRO, KCCO, WAGE-A, and NMRO.

ISSUES:

Whether there is good cause to treat the employer's late appeal from the January 19, 2023 (reference 01) decision as a timely appeal.

Whether the employer unreasonably delayed filing the appeal.

FINDINGS OF FACT:

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

Carin Horne (claimant) established an Iowa combined wage claim for benefits that was effective December 25, 2022. The Iowa Workforce Development set the weekly benefit amount at \$371.00. The claimant did not immediately commence making weekly claims. The claimant reopened the claim effective January 8, 2023. The claimant then made weekly claims for the two weeks ending January 14 and January 21, 2023 and reported \$25.00 in wages for each of those two weeks. The claimant then discontinued her claim for benefits and did not make an additional claim until she established an "additional claim" for benefits that was effective February 12, 2023.

The claimant's base period wages derive from employment with Hawkeye Community College, where the claimant worked as a part-time adjunct instructor in the social sciences department. The claimant teaches online courses to distance learners. The claimant generally teaches two to three classes per academic term. The employer limits adjunct instructor to 15 total load hours, roughly five classes during the fall-spring academic year. During the Fall 2022 academic term, the claimant carried nine load hours. Fall 2022 classes ended on December 15, 2022. The claimant then had until December 19, 2022 to submit grades. Once the claimant submitted grades, Hawkeye Community College did not have further work for her until March 9, 2023, though the Spring 2023 term began on January 9, 2023. The wages the claimant reported for the weeks that ended January 14 and January 21, 2023 were not wages earned with Hawkeye Community College. The claimant's teaching assignment for each semester depended on student enrollment and the department's discretion in assignment instructors to courses. During the period at issue in the present appeal, the period of December 25, 2022 through January 21, 2023, the claimant remained available to perform work for Hawkeye.

On January 18, 2023, Lynn Duit, Associate Director of Human Resources Services at Hawkeye Community College, represented the employer at a fact-finding interview that addressed whether the claimant was able to work and available for work beginning December 25, 2022. During the fact-finding interview, the deputy told the parties to expect a decision in the mail.

On January 19, 2023, Iowa Workforce Development mailed the January 19, 2023 (reference 01) decision to the parties' last-known address of record. The reference 01 decision allowed benefits to the claimant for the period beginning December 25, 2022, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant was still employed with Hawkeye Community College, was on a short-term layoff, and was deemed able and available for work during the layoff. The reference 01 decision stated the decision would become final unless an appeal was postmarked by January 29, 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. January 29, 2023 was a Sunday and the next working day was Monday, January 30, 2023. The employer has no record or recollection of receiving the reference 01 decision and does not believe the employer received the decision prior to receiving a copy of the Appeals Bureau in a packet mailed on July 28, 2023. The employer has methodically maintained a file pertaining to the claimant's claims for benefits. The employer date-stamps and file IWD correspondence as it is received. The weight of the evidence indicates the employer did not receive the January 19, 2023 (reference 01) decision when it was mailed in January 2023, was unaware of the January 2023 deadline for appeal, and did not file an appeal of the decision by the deadline for appeal.

Though the IWD deputy had told the employer on January 18, 2023 to expect a decision in the mail, the employer did not follow up on the matter when the employer did not receive a decision.

The claim for benefits next came to the employer's attention on April 15, 2023, when the employer received a Notice of Reimbursable Charges for the quarter that ended March 31, 2023. The employer did not appeal the charge and instead paid the charge.

The claim for benefits next came to the employer's attention in July 2023, when the employer received a Notice of Reimbursable Charges for the quarter that ended June 30, 2023. IWD mailed the notice of Reimbursable Charges on July 15, 2023.

On July 25, 2023, Ms. Duit drafted a letter to Iowa Workforce Development Tax Bureau Chargeback Unit and unsuccessfully attempted to fax her letter to the Chargeback Unit's fax number.

On July 27, 2023, Ms. Duit faxed an appeal to the Unemployment Insurance Appeals Bureau. The Appeals Bureau received the appeal on July 27, 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 employer's appeal was filed on July 27, 2023, when the Appeals Bureau received the faxed appeal. The employer had good cause for not filing an appeal by the January 30, 2023 effective appeal deadline, based on the employer not receiving or having notice of the decision by then. However, the employer unreasonably delayed filing the appeal until July 27, 2023. The employer was on notice as of January 18, 2023 to expect a decision in the mail. When the employer did not receive a decision within a reasonable period, the employer did not take reasonable steps, or any steps, to inquire about the expected decision. As of April 15, 2023, the employer had notice that the employer's account was being charged for benefits paid to the claimant, which charge indicated that IWD had entered a decision adverse to the employer. Rather than take reasonable steps to inquire about the decision or the charge for benefits, the employer paid the charge for the first quarter of 2023 and took no further action at the time. The employer did not consider the matter again until three months later when the employer received the next quarterly charge mailed on July 15, 2023. Because the evidence establishes unreasonable delay in filing the appeal, the administrative law judge concludes there is not good cause to treat the late appeal from the January 19, 2023 (reference 01) decision as a timely appeal. In light of the ruling, the administrative law judge lacks jurisdiction to disturb the decision from which the employer 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 employer's appeal from the January 19, 2023 (reference 01) decision was untimely. The reference 01 decision remains in effect but only applies to the four-week period between December 25, 2022 and January 21, 23. For that period, the claimant is eligible for benefits, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant was still employed with Hawkeye Community College, was on a short-term layoff, and was deemed able and available for work during the layoff.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for determination of the able and available issues in connection with the “additional claims” for benefits that were effective February 12, 2023 and May 7, 2023. The remand should also address whether the claimant is subject to the between-academic terms disqualification set forth at Iowa Code section 96.4(5) in connection with the original claim and the two additional claims.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

August 14, 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
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.