

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD A LEMIRE
Claimant

HY VEE INC
Claimant

APPEAL 22A-UI-01792-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Able to and Available for Work

STATEMENT OF THE CASE:

Richard A LeMire, the claimant/appellant, filed an appeal from the February 8, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits as of December 13, 2020 because he was not able to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on February 11, 2022. Mr. LeMire participated and testified. The employer participated through Jennifer Rice Corporate Cost Control hearing representative, and Chad Meinfma, service manager. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. LeMire's appeal filed on time?
Is Mr. LeMire able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. LeMire at the correct address on February 8, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 18, 2021.

Mr. LeMire did not remember getting the decision the mail, and he was not sure if he got the decision. Mr. LeMire's address has not changed since he filed his initial claim, and he is not aware of any issues regarding him receiving him mail.

IWD issued two additional decisions finding Mr. LeMire was overpaid REGULAR UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Mr. LeMire received at least one of those decisions in the mail. Mr. LeMire filed an appeal via mail postmarked by the United States Postal Service on December 28, 2021. The appeal was received by Iowa Workforce Development on December 29, 2021. IWD set up appeals for the reference 01 decision and the three overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. LeMire's appeal of the reference 01 decision was not filed on time.

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 Data 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 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).

The administrative law judge concludes that Mr. LeMire received the reference 01 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. LeMire's delay in filing his appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing his appeal before the deadline. Mr. LeMire's appeal of the reference 01 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. LeMire's appeal of the reference 01 decision was not filed on time. The February 8, 2021, (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 2, 2022
Decision Dated and Mailed

dz/kmj

NOTE TO MR. LEMIRE:

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** To apply for PUA benefits,
 - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
 - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
 - Go to the last two sentences in that section.
 - The PUA application link is at the end of the second-to-last sentence of the section.
 - The reference number/authorization number is the pin number you used for the appeal hearing: 101792.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But, you can still apply for PUA benefits at the link above if you were unemployed for reasons related to COVID-19 between February 2, 2020, and June 12, 2021.**