

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACY LENZ
Claimant

MERCY HEALTH SERVICES-IOWA CORP
Employer

APPEAL 22A-UI-05736-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(38) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Tracy Lenz, the claimant/appellant, filed an appeal from the February 12, 2021 (reference 02) unemployment insurance (UI) decision that concluded she was denied benefits as of May 3, 2020 because Ms. Lenz was still employed in her job with this employer for the same hours and wages as in her original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on April 14, 2022. Ms. Lenz participated personally. The employer informed Iowa Workforce Development (IWD) that it would not participate in the hearing, and the employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Lenz's appeal filed on time?
Is Ms. Lenz able to and available for work?
Is Ms. Lenz temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Lenz at the correct address on February 12, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 22, 2021.

Ms. Lenz received the decision in the mail. Ms. Lenz disagreed with the decision, but she took no action at that time.

IWD issued two additional decision finding in February 2022 Ms. Lenz was overpaid REGULAR (state) UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms.

Lenz received those decisions in the mail. Ms. Lenz filed an appeal online on March 3, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on March 3, 2022. IWD set up appeals for the two overpayment decisions and the reference 02 decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Lenz's appeal of the reference 02 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).

Ms. Lenz received the reference 02 decision on the deadline and, therefore, could have filed an appeal on the appeal deadline. The notice provision of the decision was valid. Ms. Lenz's delay in filing her 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 her appeal before the deadline. Ms. Lenz's appeal of the reference 02 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. Lenz's appeal of the reference 02 decision was not filed on time. The February 12, 2021, (reference 02) 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

April 19, 2022
Decision Dated and Mailed

dz/scn

NOTE TO MS. LENZ:

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits for those weeks. **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 is the pin number you used for the April 14, 2022 appeal hearing: 105736.
- **If IWD finds you eligible for PUA benefits, you can use the PUA benefits to pay off the REGULAR UI overpayment.**
- **If you do not apply for and are not approved for PUA, you will 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.**