

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DENISE R SCHULZE**  
Claimant

**HY VEE INC**  
Employer

**APPEAL NO. 21A-UI-13708-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21  
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(3) – Able & Available  
Iowa Code section 96.1A(37) – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant, Denise Schulze, filed a late appeal from the April 6, 2021, reference 01, decision that denied benefits effective March 14, 2021, based on the deputy's conclusion that the claimant was not partially unemployed from employment with Hy-Vee, Inc. After due notice was issued, a hearing was held on August 5, 2021. The claimant participated. Janice Barger represented the employer. Exhibit A, the June 8, 2021, online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the April 6, 2021, reference 01, decision, the June 10, 2021, Assessment for PUA Benefits, DBRO, DBIN, KCCO, NMRO, KPYX, KPY1, WAGE-A, and any protest filed by Millstream Investments, Inc. (employer account number 306961).

**ISSUE:**

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

**FINDINGS OF FACT:**

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

The claimant established a new original claim and a second benefit year that was effective March 14, 2021.

On April 6, 2021, Iowa Workforce Development mailed the April 6, 2021, reference 01, decision to the claimant's Walford, Iowa last-known address of record. The reference 01 decision denied benefits effective March 14, 2021, based on the deputy's conclusion that the claimant was not partially unemployed from the Hy-Vee, Inc. employment. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by April 16, 2021 or was received by the Appeal Section by that date. The claimant collected the reference 01 decision from her post office box on April 10, 2021. The claimant read the decision and noted the deadline for appeal. The claimant did not take any steps to file an appeal from the decision by the April 16, 2021 deadline.

On April 12, 2021, the claimant called Iowa Workforce Development to check on the status of benefits in connection with the new benefit year that was effective March 14, 2021. The claimant told the IWD representative that she had received the decision concerning herself and Hy-Vee. The IWD representative advised the claimant to file an appeal from the Hy-Vee decision, but the claimant did not follow that advice and did not file an appeal. The claimant advises that the IWD representative told the claimant that a decision regarding the claimant and Millstream was still pending.

On June 8, 2021, the claimant completed and transmitted an online appeal from the April 6, 2021, reference 01 decision. The Appeals Bureau received the appeal on June 8, 2021.

### **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). The 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 an untimely appeal from the April 6, 2021, reference 01, decision. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal by the April 16, 2021 appeal deadline. On April 12, 2021, the claimant spoke with an IWD representative, mentioned the reference 01 decision, and was specifically advised that needed to file an appeal from the decision. Even after that contact and advice, the claimant still elected not to file an appeal from the reference 01 decision by the April 16, 2021 deadline. It took additional contacts with IWD and additional specific advice from and IWD representative to prompt the claimant to finally file an appeal from the reference 01 decision on June 8, 2021. However, by that time the appeal was several weeks late. The claimant unreasonably delayed filing the appeal. The evidence establishes delay attributable to the claimant and not attributable to IWD or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the reference 01 decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the April 6, 2021, reference 01, decision was untimely. The decision that denied regular state benefits for the period beginning March 14, 2021, based on the deputy's conclusion that the claimant was not partially unemployed from her employment with Hy-Vee remains in effect.



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James E. Timberland  
Administrative Law Judge

November 17, 2021  
Decision Dated and Mailed

jet/kmj

**Note to Claimant:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.