

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HAILY M ROSS**  
Claimant

**HY-VEE INC**  
Claimant

**APPEAL 22A-UI-05576-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

Iowa Code §96.6(2) – Timely Appeal  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Haily M Ross, the claimant/appellant, filed an appeal from the March 18, 2021 (reference 01) unemployment insurance (UI) decision that denied benefits as of March 22, 2020 because Ms. Ross could not be contacted by the local IWD center for a job referral. The parties were properly notified about the hearing. A telephone hearing was held on April 13, 2022. Ms. Ross participated personally. The employer participated through Shenna Murry, human resources manager, and Barbara Buss, Corporate Cost Control hearing representative. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Ross' appeal filed on time?  
Is Ms. Ross 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 Ms. Ross at the correct address on March 18, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by March 28, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. March 28, 2021 was a Sunday; therefore, the deadline was extended to Monday, March 29, 2021.

Ms. Ross received the decision in the mail. Ms. Ross' father checks her mail because Ms. Ross is diagnosed with an autoimmune disease. Ms. Ross did not recall her father telling her about any decision denying her benefits. Ms. Ross had issues receiving mail at her address, but she did not recall when she had issues receiving mail at her address.

IWD issued three additional decisions in February 2022 finding Ms. Ross was overpaid REGULAR (state) UI benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits and Lost Wage Assistance Payments (LWAP) benefits. Ms. Ross received those

decisions in the mail. Ms. Guyett filed an appeal online on March 1, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on March 1, 2022. IWD set up appeals for the three overpayment decisions and the reference 01 decision.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Ross' 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).

Ms. Ross 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. Ms. Ross' 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. Ross' 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:**

Ms. Ross' appeal of the reference 01 decision was not filed on time. The March 18, 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

April 18, 2022  
Decision Dated and Mailed

dz/mh

**NOTE TO MS. ROSS:**

- 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: 105766.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.**
- **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.**