

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

RAYMOND J SCHUTTPELZ
Claimant

APPEAL NO. 22A-UI-14225-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.7(2)(a)(2) – Employer liability

STATEMENT OF THE CASE:

On June 21, 2022, Raymond Schuttpelz (claimant) filed a late appeal from the June 2, 2020 (reference 01) decision that *allowed* benefits to the claimant effective April 12, 2020, provided the claimant was otherwise eligible, and that held the employer account of the part-time supplemental employer, Hy-Vee, Inc. would not be charged for benefits, based on the deputy's conclusion the claimant was still employed with Hy-Vee, Inc. under the same hours and wages as in the original contract of hire. The claimant requested an in-person hearing. After due notice was issued, a hearing was held in Sioux City at the IowaWORKS Center located at 2508 E. 4th Street on October 4, 2022. Claimant participated. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Keith Emerson. Mr. Patterson and Mr. Emerson participated by telephone. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-14226-JT. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 02 and 03 decisions, DBIN, KPYX, KCCO, NMRO, WAGE-A, and the Pech Optical Corporation (employer account number 214914) protest via SIDES.

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:

Raymond Schuttpelz (claimant) established an original claim for benefits that was effective April 12, 2020. The claimant established the claim in response being laid off by his full-time employer, Pech Optical Corporation (employer account number 214914). Pech is also known as Essilor. At the time the claimant established his claim for benefits, he also had part-time supplemental employment with Hy-Vee that continued without change in the conditions of the employment. The claimant made weekly claims for the five weeks between April 12, 2020 and

May 16, 2020. Based on the claimant's reported earned wages, the claimant received unemployment insurance benefits, regular and Federal Pandemic Unemployment Compensation (FPUC), only for the weeks that ended May 9 and May 16, 2020. The claimant discontinued his weekly claims following the week that ended May 16, 2020 and did so in response to being recalled to the full-time, Pech Optical/Essilor employment effective May 15, 2020.

On June 2, 2020, Iowa Workforce Development mailed the June 2, 2020 (reference 01) decision to the claimant's Sioux City last-known address of record. The reference 01 decision *allowed* benefits to the claimant effective April 12, 2020, provided the claimant was otherwise eligible, and that held the employer account of the part-time supplemental employer, Hy-Vee, Inc. would not be charged for benefits, based on the deputy's conclusion the claimant was still employed with Hy-Vee, Inc. under the same hours and wages as in the original contract of hire. In other words, the decision was favorable to the claimant and to Hy-Vee, Inc. and as such would not present either party with a compelling reason to file an appeal to challenge the decision. The reference 01 decision stated the decision would become final unless an appeal was postmarked by June 12, 2020 or was received by the Appeals Section by that date. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The decision included a back side that set forth the instructions for filing an appeal. The claimant did not take steps to file an appeal from the decision by the appeal deadline. The claimant retained his copy of the reference 01 decision and brought it with him to the appeal hearing.

On April 25, 2022, Iowa Workforce Development mailed the April 25, 2022 (reference 02) overpayment decision to the claimant's Sioux City address of record. The reference 02 decision held the claimant was overpaid \$421.00 in regular state benefits and \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for the two weeks between May 3, 2020 and May 16, 2020. The reference 02 overpayment decision cited the reference 01 decision as the basis for the overpayment determination, despite the reference 01 decision being favorable to the claimant. The reference 02 decision stated that the decision would become final unless an appeal was postmarked by May 5, 2022 or was received by the Appeals Bureau by that date. The claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal. The reference 02 decision indicated on its face that additional information would be on the reverse side. However, the reverse side of the claimant's copy of the reference 02 decision was and is blank. The claimant brought the reference 02 decision to the in-person appeal hearing and the administrative law judge was able to see the reverse side of the document was blank.

On June 21, 2022, the claimant completed and transmitted an online appeal from the April 25, 2022 (reference 02) decision. The Appeals Bureau received the appeal on June 21, 2022 and treated it, for good measure, as also an appeal from the June 2, 2020 (reference 01) decision.

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 evidence in the record establishes an untimely appeal from the June 2, 2020 (reference 01) decision. The evidence establishes that the claimant received the reference 01 decision in a timely manner and had a reasonable opportunity to file an appeal by the appeal deadline. A June 21, 2022 appeal from the reference 01 decision would be untimely. In any event, the reference 01 decision was favorable to the claimant. 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, as it relates to the June 2, 2020 (reference 01) decision, is untimely. The decision that *allowed* benefits to the claimant effective April 12, 2020, provided the claimant was otherwise eligible, and that held the employer account of the part-time supplemental employer, Hy-Vee, Inc. would not be charged for benefits, based on the deputy's conclusion the claimant was still employed with Hy-Vee, Inc. under the same hours and wages as in the original contract of hire, remains in effect. The reference 01 decision applies to the five-week period of April 12, 2020 through May 16, 2020.



James E. Timberland
Administrative Law Judge

October 12, 2022
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.