

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TESSA A FELLERER
Claimant

APPEAL NO. 21A-DUA-00519-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

PL 116-136 Section 2102 – Pandemic Unemployment Assistance
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a late appeal from the December 15, 2020 Assessment for PUA Eligibility decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant did not meet the eligibility requirements. After due notice was issued, a hearing was held on March 9, 2021. The claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-02669-JT-T. Exhibit A and B were received into the hearing record.

The administrative law judge took official notice of Agency administrative records pertaining to the claimant's claim for benefits, including DBRO, KCCO, KPYX, WAGE-A, NMRO, the monetary record, the application for PUA benefits, the Assessment for PUA Eligibility, the deputy's notes regarding the denial of PUA, and the May1, 2020, reference 01, decision.

The administrative law judge left the hearing record open through Friday, March 12, 2021 for the limited purpose of allowing the claimant the opportunity to submit (1) a complete work search log for the period beginning March 29, 2020 to the present, (2) medical documentation for 2020 to the present linking the claimant's purported illness to COVID-19, and (3) other relevant documentation in support of the claimant's appeal of the PUA denial decision, including any paystubs the claimant wanted to submit. The claimant submitted materials on March 11, 2021 that included three attachments. Two of the attachments were duplicate earnings statements from American Security those materials were received into the hearing record as Exhibits C. A third attachment was password protected, could not be opened, and was not received into the hearing record. On March 13, 2021, the claimant submitted an October 15, 2020 physician's progress note, which was received into evidence as Exhibit D.

ISSUES:

Is there good cause to treat the claimant's late appeal as a timely appeal?
Is the claimant eligible for PUA?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development deemed the claimant “monetarily eligible” for benefits and set the claimant’s weekly benefit amount for regular benefits at \$481.00. Iowa Workforce Development did not disburse any benefits to the claimant in connection with the claim.

At the time the claimant established the March 29, 2020 original claim, she had most recently been employed by USIC Locating Service, L.L.C. as a full-time Utility Locator. The claimant voluntarily quit the USIC employment effective October 1, 2019. The claimant’s decision to leave the employment was based on an equipment safety concern, a concern about lighting on an assigned work truck. The claimant’s decision to leave the employment pre-dated the arrival of COVID-19 and was not related to COVID-19. On May 1, 2020, Iowa Workforce Development mailed a reference 01 decision to the claimant at her last-known address of record. The reference 01 decision disqualified the claimant for regular unemployment insurance benefits, based on the deputy’s conclusion that the claimant had voluntarily quit USIC due to dissatisfaction with the working conditions and without good cause attributable to the employer. The claimant received the reference 01 decision in a timely manner, but did not file an appeal from the decision by the May 11, 2020 deadline or at any point prior to January 6, 2021. Pursuant to the reference 01 decision, the claimant was disqualified for regular benefits in connection with the March 29, 2020 original claim until she worked in and was paid wages for insured work equal to 10 times her weekly \$481.00 weekly benefit amount.

The claimant had one other employment in 2019, with employer Zoetis, L.L.C. The claimant last worked for Zoetis during the second quarter of 2019. The claimant advises that the work was performed in a cold environment. The claimant advises that she suffers from Raynaud’s disease and for that reason could not continue in the Zoetis employment. The separation from the Zoetis employment did not result from COVID-19.

After the claimant voluntarily quit USIC in October 2019, she was unemployed until she commenced new full-time employment with Brosnan Security as Field Supervisor on or about July 14, 2020.

The claimant makes the unsubstantiated assertion that she had job offers between her separation from USIC and her employment with Brosnan that she was unable to move forward with in light of COVID-19. When asked whether the claimant had any documentation regarding a job offer with a start date that was deferred or rescinded due to COVID-19; the claimant advises she has not such documentation.

On May 27, 2020, the claimant submitted an application for Pandemic Unemployment Assistance (PUA) benefits. In the decision, the claimant stated only that “Had several interviews but all have decided not to hire right now because of Covid 19.” The statement in the PUA application contradicts the claimant’s statement that at the appeal hearing that she had received job offers during the relevant period that could not go forward because of COVID-19.

The Brosnan employment was located in Minnesota. The claimant advises that she was promoted to Regional Account Manager during her short tenure with Brosnan. The claimant advises that the security work pertained to riots and to training Walmart personnel regarding COVID-19. The claimant advises that the Brosnan employment came to an end in September 2020 and that the employment ended because the employer “lost all of their contracts in Minnesota.” The claimant does not know the specific date of her separation from the Brosnan

employment. The claimant advises that she was a salaried employee at Brosnan, that her starting salary was \$34,595.00 annually, but that her salary increased to \$55,000.00. The claimant's September 2020 separation from the Brosnan employment was not related to COVID-19.

In September, the claimant began a new full-time employment with American Security. The claimant voluntarily quit the American Security employment in October 2020 in connection with her decision to relocate to Wells, Minnesota. The claimant's October 2020 separation from American Security was not related to COVID-19. The claimant has had no further employment with voluntarily separating from American Security.

The claimant did not have any self-employment ventures in 2019 or to the present.

The claimant makes the unsubstantiated claim that she has a chronic lung disease *caused by COVID-19*. The claimant advises that she was unaware that she was ill with COVID-19 and that she was never tested for COVID-19 or diagnosed with COVID-19. However, the claimant sought evaluation and treatment for a respiratory ailment. The claimant asserts she was told her illness was likely from COVID-19. The claimant asserts that she coughed so hard that she suffered permanent respiratory damage. The administrative law judge invited the claimant to submit medical documentation concerning the purported respiratory illness and the link to COVID-19. The claimant provided an October 15, 2020 physician's progress note that makes no link between the claimant's respiratory issue and COVID-19. See Exhibit D.

No one in the claimant's household was diagnosed with COVID-19. From 2018 until January 2021, the claimant resided with her boyfriend. As of February 2021, the claimant resided with friends who are a married couple. The claimant has adult children who do not reside with her.

The administrative law judge requested that the claimant submit a complete work search log, provided additional time for the claimant to submit the log, but received no such record.

On December 15, 2020, Iowa Workforce Development mailed the December 15, 2020 Assessment for PUA Benefits to the claimant's La Porte City, Iowa last-known address of record. The decision denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant did not meet the eligibility requirements set forth at section 2102)(a)(3)(A)(ii)(I) of the CARES Act. The decision stated that it would become final unless an appeal was postmarked by December 26, 2020 or was received by the Appeals Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 26, 2020 was a Saturday and Monday, December 28, 2020 was the next working day. The claimant did not file an appeal from the December 15, 2020 decision by the extended December 28 2020 deadline. The claimant had not received the December 15, 2020 decision. The claimant did not receive the Assessment for PUA decision until January 6, 2021. On January 6, 2021, the claimant completed and transmitted an online appeal. With regard to the late filing of the appeal the claimant wrote:

My denial was done 15th of Dec. I did a change of address 17th of December. The Agent I spoke to today told me of this letter. FIRST I HEARD OF THIS LETTER!!!! As many times as I've called, no other agent told me of this letter. I never received a letter. Agency emailed me the information today, because she asked if I did the APPEAL. I told her I didn't know I had to. 23rd of December an email was sent to me saying IWD forward[ed] an email with my pay stubs to the person working the PUA Application. I have emails, call logs, and you have my recorded calls and logs.

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).

The evidence establishes good cause to treat the claimant's late appeal as a timely appeal. The claimant did not receive or learn of the decision until January 6, 2021 and filed an appeal that same day. Accordingly, the claimant did not have a reasonable opportunity to file an appeal by the extended December 28, 2020 appeal deadline. The claimant promptly filed her appeal when she learned of the decision. The delay in filing the appeal was attributable to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to make a determination on the merits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.4(4)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

The claimant was monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa, but was disqualified for regular benefits through the May 1, 2020, reference 01, decision regarding her October 1, 2019 voluntary quit from USIC Locating Services, L.L.C. Thus, the claimant effectively exhausted regular benefits as of the original claim date.

Public Law 116-136, the CARES Act, at Section 2102, provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19. Section 2012 provides Pandemic Unemployment Assistance PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. PL 116-136 Section 2102(a), (b) and (c), provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) DEFINITIONS. — In this section:

(3) COVERED INDIVIDUAL. — The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual— (I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual’s household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;

(ii) the individual has to quit his or her job as a direct result of COVID–19;

(jj) the individual’s place of employment is closed as a direct result of the COVID– 19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID– 19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY. —


(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

The claimant is not eligible for PUA benefits. None of the claimant's unemployed status has been caused by COVID-19. Each of the relevant separations was decidedly for a reason other than COVID-19. The evidence in the record provides no reasonable basis for concluding that the claimant's lung illness was caused by COVID-19. The claimant failed to present sufficient evidence to establish that she was able to work and available for work but for COVID-19 during the relevant periods of unemployment.

DECISION:

The December 15, 2020 Assessment for PUA Eligibility decision that denied Pandemic Unemployment Assistance (PUA) benefits is affirmed. The claimant is not eligible for PUA benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

April 30, 2021
Decision Dated and Mailed

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