

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VINCENT LOPEZ
Claimant

J P OHARA INC
Employer

APPEAL 21A-UI-06599-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Vincent Lopez, the claimant/appellant, filed an appeal from the July 27, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2021. Mr. Lopez participated and testified. The employer participated through Mark Schmitt.

ISSUES:

Is Mr. Lopez's appeal filed on time?
Is Mr. Lopez 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 Mr. Lopez at the correct address on July 27, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 6, 2020. Mr. Lopez received the decision in the mail. Mr. Lopez called Iowa Workforce Development sometime on July 28, 29 or 30 to ask about the decision. The Iowa Workforce Development representative told Mr. Lopez that the employer needed to send an email to Iowa Workforce Development explaining the situation. Mr. Lopez talked with the employer and the employer sent an email on July 31, 2020 explaining that Mr. Lopez had taken a temporary absence from work in April 2020 due to the COVID-19 pandemic to protect himself and his family and that he had returned to work in May 2020.

Mr. Lopez then received another decision from Iowa Workforce Development dated February 16, 2021 that concluded he was overpaid benefits. Mr. Lopez spoke with an Iowa Workforce Development representative again who told him that he could file an appeal. Mr. Lopez filed an appeal via email on February 23, 2021. The appeal was received by Iowa Workforce Development on February 23, 2021.

The administrative law judge further finds: Mr. Lopez began working for the employer part-time in 2005. In 2008, he began working full-time. Mr. Lopez works as a driver and he does a little bit of everything else, too.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Mr. Lopez and his wife decided that he should take time off of work due to his age and weak immune system and to protect his wife and the young man they are raising who is living with disability from testing positive for COVID-19. Mr. Lopez asked his employer to be off of work for the month of April 2020. The employer agreed and Mr. Lopez took off the month of April 2020. Mr. Lopez returned to work in May 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Lopez's appeal was 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).

Mr. Lopez received the decision in the mail before the deadline. The notice provision of the decision was valid. Mr. Lopez's delay in filing his appeal was due to an error or misinformation from the Department. Mr. Lopez's appeal was filed on time.

The administrative law judge further concludes that Mr. Lopez is not available for work from April 5, 2020 through April 30, 2020.

Iowa Code section 96.4(3) provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In this case, Mr. Lopez requested and the employer agreed that he could take a leave of absence for the month of April. Since Mr. Lopez was not available to work during this time period, regular, state-funded unemployment insurance benefits are denied from April 5, 2020 through April 30 2020.

Even though Mr. Lopez is not eligible for regular unemployment insurance benefits under state law from April 5, 2020 through April 30, 2020, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during this time period. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

Mr. Lopez's appeal was filed on time. The July 27, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. Lopez. Mr. Lopez was not available for work from April 5, 2020 through April 30, 2020. Benefits are denied during this time. Benefits are allowed effective May 1, 2020, provided Mr. Lopez is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 19, 2021
Decision Dated and Mailed

dz/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **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.**