

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL WATSON
Claimant

APPEAL-20A-DUA-00845-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/20/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

On October 30, 2020, the claimant filed an appeal from the Assessment for Pandemic Unemployment Assistance (PUA) benefits dated September 12, 2020, reference 00, which determined claimant was not eligible for federal PUA benefits.

After proper notice, a telephone hearing was held on December 18, 2020. The claimant participated personally. One of the claimant's former roommates, Ashley Wilson, also testified in support of the claimant. The administrative law judge took judicial notice of the administrative records. Exhibits A and B were admitted. Department Exhibits 1 and 2 were admitted.

ISSUE:

1. Whether the claimant filed a timely appeal? Whether there is good cause to treat the appeal as timely?
2. Is the claimant eligible for Pandemic Unemployment Assistance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In March 2020, the United States declared a public health emergency based on the COVID-19 pandemic.

Claimant is self-employed and has no insured wages in his monetary record. Therefore, claimant is not eligible for regular unemployment insurance benefits.

Then claimant applied for Pandemic Unemployment Assistance (PUA) benefits on September 20, 2020. In his claim detail, the claimant wrote he performed, "Odd jobs, carpentry, anything [he] can do from with [sic] in walking distance of [his] residence." The claimant has been operating his own business, Watson Construction, since 1980. The claimant relies on word of mouth. He no longer advertises his services.

During the hearing, the claimant alleged he was “semi-retired” from February 2019 to the spring of 2020. At that time, the claimant was diagnosed with high blood pressure. The claimant was worried about having a heart attack and made an attempt to scale back on the amount of hours he was working. Initially, the claimant said he could not even give an approximate amount of income he received from his business in 2019. At the end of hearing, the claimant said he made approximately \$10,000 in 2019. The claimant provided a handwritten note stating he received \$3,000.00 in income for performance of many odd jobs from January 2019 to June 2019. (Exhibit C)

On March 19, 2020, Abigail Doerder, one of the claimant's roommates, began experiencing symptoms of an illness which caused her to be fatigued for the next 10 days to two weeks. Ms. Doerder's muscles were too weak to get out of bed. Ms. Doerder received a note from the hospital stating she had tested positive for Covid19 and should quarantine. The other occupants of the house including the claimant and Ms. Wilson became ill roughly within a week. It took approximately five weeks for everyone in the house to recover.

In the beginning of April 2020, the claimant alleges he was not able to find work despite his efforts because his client base had heard Ms. Doerder had Covid19 and refused to work with him. The claimant said he was unaware how his client base was aware Ms. Doerder had Covid19. The claimant initially merely explained, “Ames is a small town.” The claimant further explained that everyone is a neighbor in Ames because it has good public transportation. However, the claimant also said, “The neighbors all heard [Ms. Doerder] had Covid19. I try to work for the neighbors.”

The claimant alleges a neighbor across the street had previously told him that she wanted him to work on her deck, but in April 2020, she said she was going to wait until the Covid19 pandemic passed.

On June 16, 2020, the claimant's household was instructed to quarantine because one of the members had been in contact with someone who was positive for Covid19. The claimant believed he was experiencing symptoms of Covid19, but he does not have insurance, so he did not get a diagnosis.

In July 2020, the claimant moved to Marshalltown, Iowa from Ames, Iowa.

In the middle of August 2020, the claimant alleges he started feeling symptoms of Covid19 because he was fatigued and coughing. It took him about 10 days to recover.

At the end of the hearing, the claimant alleged he received approximately \$2,000.00 in 2020. The claimant did not have any income records to provide Iowa Workforce Development to confirm his receipt of this income.

Iowa Workforce Development attempted to send the Assessment for PUA benefits dated September 12, 2020, reference 00, to the claimant's PO Box. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 24, 2020. The appeal was not filed until October 30, 2020, which is after the date noticed on the disqualification decision (Department Exhibit D-2). The claimant maintains he has the US Postal Service's Informed Delivery service set up for his PO Box, which informs him if he has received mail. As of the date of the hearing, the claimant had not received the Assessment for PUA benefits dated September 12, 2020, reference 00. The claimant provided various emails he sent and received from Iowa Workforce Development and the Department of Labor regarding he in fact finding determination and asking how he could appeal. (Exhibit B)

The claimant sent an email narrative to the administrative law judge through clerks assigned to the case on December 18, 2020. (Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is excused from filing a timely appeal due to an error in the US Postal Service or Iowa Workforce Development's processes. The administrative law judge also finds the claimant is not eligible for PUA benefits.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant credibly testified he had Informed Delivery on his PO Box address and did not ever receive the Assessment for PUA benefits dated September 12, 2020, reference 00. The administrative law judge concludes that claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to either Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As a result, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The next question to address is whether the claimant is eligible for PUA benefits. The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 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. That period was subsequently extended through the week ending March 13, 2021 and, in some cases, through the week ending April 10, 2021. See Consolidated Appropriations Act of 2021. The issue to be determined here is whether claimant is a "covered individual" within the meaning of applicable law.

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Section 2102(a)(3) defines individuals who are eligible for PUA benefits.

(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—

(l) 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

(ll) 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 (l); 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)(l).

An individual must be unemployed and the unemployment must be caused by a major disaster. 20 CFR 625.4.

Title 20 of the Code of Federal Regulations, section 626.2(t) defines an unemployed self-employed individual as follows:

(t) Unemployed self-employed individual means an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in § 625.5(b).

Title 20 of the Code of Federal Regulations, section 626.5(b) and (c) provide:

(b) Unemployed self-employed individual. The unemployment of an unemployed self-employed individual is caused by a major disaster if—

(1) The individual has a "week of unemployment" as defined in § 625.2(w)(2) following the "date the major disaster began" as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or

(2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or

(3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or

(4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

(c) Unemployment is a direct result of the major disaster. For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

- (1) The physical damage or destruction of the place of employment;
- (2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or
- (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

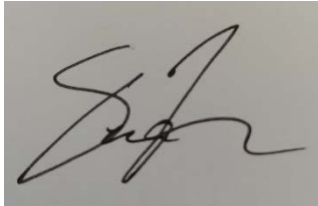
It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant is ineligible for regular state benefits due to lacking insured wages to be monetarily eligible. In his claim detail and during the hearing, the claimant alluded he was eligible for PUA under Section 2102(a)(3) (ee), (jj) and (gg). All three sections spring from the claimant's allegation his client base refused to offer him work because his roommate had tested positive for Covid19. The administrative law judge does not find the claimant's allegations credible that clients refused to use his services as they had in the past because Ms. Doerder's positive diagnosis. The claimant could not explain how his clients were aware of Ms. Doerder's positive diagnosis, especially given that the claimant was not even living in the same city as of July 2020.

Instead, the claimant has a tenuous relationship with work prior to the Covid19 pandemic primarily because his client base was limited to his neighbors living within walking distance of his residence. The handwritten income statement the claimant provided for 2019 shows he received approximately \$3,000.00 for these odd jobs over a six month period. The request for PUA benefits is denied.

DECISION:

The September 12, 2020, reference 00, Assessment for PUA benefits is affirmed. The claimant is not eligible for PUA. Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

January 20, 2021
Decision Dated and Mailed

smn/scn