

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TERRY UHL**  
Claimant

**APPEAL 20A-UI-05410-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KASTIM CORPORATION**  
Employer

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

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The claimant/appellant, Terry Uhl, filed an appeal from the May 14, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2020. The claimant participated. The employer, Kastim Corporation, participated through Teresa Kasch, general manager.

The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Claimant Appeal Letter) was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant file a timely appeal?  
Is the claimant eligible for partial unemployment insurance benefits?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Has the claimant been overpaid any unemployment insurance benefits?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time maintenance person in October 2018. He earns \$11.25 per hour and is not guaranteed a certain number of hours each week. His hours fluctuate based upon business needs. The claimant agreed to this arrangement at hire.

The claimant also works part-time at White Glove Janitorial Sales and Service in Spencer, Iowa. He works approximately 4-8 hours per week as a janitor there, earning \$12.33 per hour.

Since establishing his claim for benefits with an effective date of March 29, 2020, the claimant has worked for Kastim Corporation each week. The employer operates a restaurant, which remained open in some capacity even with COVID-19 restrictions. Every week since he filed his claim, the employer has offered the claimant employment.

In addition, the employer stated the claimant has not worked all available hours due to being absent or several minutes late to multiple shifts. Since filing his claim for benefits, the claimant has been absent May 6, 24 and June 16. He was tardy 29 minutes on March 29, 2020, 40 minutes late on April 12, and 56 minutes late on May 20, 2020, thereby reducing some available hours of work to him.

An initial unemployment insurance decision (reference 01) resulting in a denial of benefits was mailed to the claimant's last known address of record on May 14, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 24, 2020. May 24 was a Sunday and May 25, 2020 was Memorial Day, so the final day to appeal was extended to May 26, 2020. He received the decision within the appeal period. He took the initial decision to the Spencer office on May 20, 2020 and was directed to fill out the appeal form (Department Exhibit 1). The Spencer office representative told the claimant upon completion of the form that it would be submitted for him. A copy of the envelope, fax or email, for which the appeal was transmitted from the Spencer IWD office to the Appeals Bureau was not available at the time of hearing. For unknown reasons, it was not received by the Appeals Bureau until June 8, 2020.

The administrative record reflects that claimant has a weekly benefit amount of \$257.00 but has not received unemployment benefits since filing his claim with an effective date of March 29, 2020. He has not received any federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC).

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

*For the reasons that follow the administrative law judge concludes the claimant's appeal is timely.*

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 credible evidence presented is that the claimant went to the Spencer IWD office on May 20, 2020 to submit his appeal. The appeal was completed within the prescribed period to appeal, and the claimant reasonably relied upon the office to timely submit the appeal on his behalf, as they stated. For unknown reasons, it was delayed in being transmitted to the Appeals Bureau. Therefore, based on the evidence presented, the administrative law judge concludes that the claimant did file a timely appeal, but it was not received due to Agency error. Therefore, the appeal shall be accepted as timely.

*For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed effective March 29, 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 96.1A, subsection 38, paragraph "b", subparagraph (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 Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Because claimant was hired to only part-time hours and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and the claimant is currently employed under the same hours and wages as contemplated when he was hired, he is not considered partially unemployed. Benefits are denied.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. 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 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. The claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

Because the claimant has not received any unemployment insurance benefits, there is no overpayment.

*The final issue to address is whether the claimant is eligible to receive Federal Pandemic Unemployment Compensation.*

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents’ allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as “Federal Pandemic Unemployment Compensation”).

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies the claimant from receiving Federal Pandemic Unemployment Compensation (FPUC).

**DECISION:**

The May 14, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was timely. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, he should contact Iowa Workforce Development.

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits. 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 due to disqualifying separations 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.** More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

**If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.**



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July 21, 2020

Decision Dated and Mailed

jlb/sam