

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KALEB C MAINS
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 22A-DUA-00051-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2R)

Iowa Code § 96.6(2) – Filing – Timely Appeal
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

On February 15, 2022, Kaleb Mains (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated January 28, 2022 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA).

A telephone hearing was held on March 28, 2022. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Valerie Cramer.

Official notice was taken of the administrative record. Claimant’s Exhibits B and D-G were admitted. Exhibits A and C were not admitted as they were contained within the administrative record.

ISSUES:

- I. Is the appeal timely?
- II. 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:

Claimant filed for and received unemployment insurance benefits from the benefit week ending March 28, 2020 through the benefit week ending September 12, 2020. Claimant was subsequently denied unemployment insurance benefits effective April 27, 2020 due to being unavailable for work beginning that date and continuing through the remaining weeks filed See 21A-UI-17519-JC-T; 22B-UI-17519-EAB.

Claimant filed the application for PUA on or about January 28, 2022. Claimant filed the application shortly after receiving decisions from the Employment Appeal Board affirming the denial of unemployment insurance benefits and the finding that he was overpaid benefits.

Claimant was quarantining beginning in March 2020 and continuing until February or March 2021. Claimant was quarantining during this time based on a physician's recommendation. Specifically, claimant's roommate had medical conditions made him particularly susceptible to COVID-19 and his roommate's physician recommended the entire household quarantine as a result. Claimant was otherwise able to and available for work during this period.

Claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) effective April 27, 2020.

The decision denying PUA was mailed to claimant at the address 8355 HARBACH BLVD CLIVE IA 50325 1115 on January 28, 2022. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 10, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on February 15, 2022.

The delay in appealing was due to the decision being sent to the wrong address. Claimant moved from the Clive address in November 2021 and contacted IWD to update his address around that time. Claimant believed he had successfully updated his address with IWD. He was unaware of the decision denying PUA until his former roommate, still living at that address, notified him of it on or about February 15, 2022. Claimant appealed at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated January 28, 2022 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is REVERSED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 record in this case shows the delay in receiving the decision was due to error or delay of USPS or IWD. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying PUA. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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 September 4, 2021. See American Rescue Plan Act of 2021.

Claims filed on or before December 27, 2020 can be backdated to January 27, 2020; claims after that time can generally only be backdated to December 1, 2020. However, if an individual filed a regular UI claim on or before December 27, 2020, and the state later determined that the individual is not eligible for regular UI, the state should use the date the claimant filed the regular UI claim as the date of filing for the PUA claim. See Unemployment Insurance Program Letter No. 16-20, Change 4.

The issue to be determined here is whether claimant is a "covered individual" within the meaning of applicable law.

(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

(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).

Because claimant filed a regular UI claim on or before December 27, 2020, and the state later determined that he was not eligible for regular UI, the effective date of the PUA filing is March 28, 2020, the date the claim for UI was filed.

The administrative law judge finds that claimant was otherwise able to work and available for work during the period in question except that he was unavailable for work because of COVID-19. Specifically, claimant was unavailable to work because he was quarantining based on a doctor's recommendation. Claimant was eligible for regular unemployment insurance benefits prior to April 27, 2020 and so is ineligible for PUA during that time. However, he was not eligible for other benefits after that date and is therefore eligible for PUA effective with that date and continuing through the subsequent weeks filed.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated January 28, 2022 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible for PUA effective April 27, 2020.

REMAND:

This matter is remanded for a determination of claimant's PUA benefit amount and issuance of PUA to claimant. The administrative law judge notes the EAB previously waived an overpayment of Federal Pandemic Unemployment Compensation in 22B-UI-17524-EAB.



Andrew B. Duffelmeyer
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March 31, 2022
Decision Dated and Mailed

abd/abd