

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CHRISTINE V ALBERS
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-DUA-00085-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (2)

PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 C.F.R. 625 – Disaster Unemployment Assistance
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On September 21, 2022, Christine V. Albers (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated January 4, 2021 (reference 09) that determined claimant was not eligible for federal Pandemic Unemployment Assistance (“PUA”).

The claimant agreed to waive notice on all necessary issues in order to hold the hearing via telephone at 2:00 p.m. on Friday, October 21, 2022. The claimant, Christine V. Albers, participated personally.

The administrative law judge marked and admitted Exhibits D-1 through D-5 and took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal? Is there good cause to treat the claimant’s appeal as timely filed?

Is the claimant eligible for PUA benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed the application for unemployment insurance benefits with an effective date of June 21, 2020. Claimant filed the initial application for PUA benefits on June 22, 2020, and she filed subsequent applications for PUA benefits on December 8 and December 9, 2020.

In 2020, claimant held a part-time job as an hourly employee making calls for Maharishi University. However, she anticipated her main source of income coming from working as an independent contractor, teaching transcendental meditation in Pennsylvania. Claimant had 75 individuals interested in learning from her, and she had a four-day course scheduled for June 2020 and another course planned for November 2020. Claimant was required to perform all of the work necessary to facilitate these courses, from arranging the courses and all travel, lodging, meals,

and logistics to advertising the courses and finding students to enroll to teaching the courses. This required a substantial amount of claimant's time and effort.

Due to the COVID-19 pandemic, claimant was forced to cancel her 2020 transcendental meditation courses. Pennsylvania was in a "yellow zone," signifying a dangerously high number of COVID-19 infections, and in-person learning was not safe or advisable. Claimant could not jeopardize her health or that of her students by traveling out of state and moving forward with her class. She was eventually able to teach her course in the summer 2021.

Claimant did provide self-certification that he was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable to work because of the impact of the pandemic on her work. Telework was not available for her planned transcendental meditation course. Claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation ("PEUC").

The decision denying claimant PUA benefits was mailed to her address of record on January 4, 2021. The claimant did not receive the decision at the time it was mailed. Claimant first received notification that she had been denied PUA benefits during the appeal hearing for 22A-UI-17337-LJ-T. During that hearing and while under oath, claimant stated she never received that decision in the mail. Claimant's September 21, 2022, appeal of her denial of waivers for her federal overpayments was applied to the PUA denial decision in order to set up an appeal for hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the Iowa Workforce Development decision dated January 4, 2021 that determined claimant was not eligible for federal PUA benefits is reversed.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is. 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).

Here, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, the claimant had no meaningful opportunity to appeal. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Additionally, the administrative law judge notes that claimant filed an appeal nearly one year ago, in timely response to several overpayment decisions she received, and that appeal arguably should have been applied to this PUA denial decision. While that would not have made the appeal timely, necessarily, it would not have rendered the appeal two years late. Based on claimant's testimony, and in the context of events, the appeal shall be accepted as timely.

The next issue is whether claimant is eligible for PUA benefits. The CARES Act was established to provide 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 provides in relevant part:

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

(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).

(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.

(d) AMOUNT OF ASSISTANCE. —

(1) IN GENERAL. — The assistance authorized under subsection (b) for a week of unemployment, partial unemployment, or inability to work shall be— (A)(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; and (ii) the amount of Federal Pandemic Unemployment Compensation under section 2104; and (B) in the case of an increase of the weekly benefit amount after the date of enactment of this Act, increased in an amount equal to such increase.

(2) CALCULATIONS OF AMOUNTS FOR CERTAIN COVERED INDIVIDUALS. — In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment *shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations*, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 2104.

(Emphasis added).

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE. —

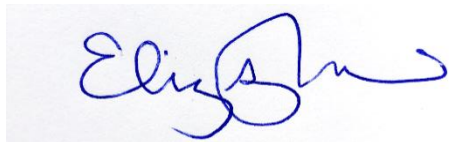
Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if— (1) the term “COVID–19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and (2) the term “pandemic” were substituted for the term “disaster” each place it appears in such section 625.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, Sec. 2102 initially provided 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.

The administrative law judge finds claimant was unemployed because of COVID-19. Specifically, claimant was unable to work because the COVID-19 pandemic made it impossible for her to begin teaching transcendental meditation in Pennsylvania, due to the danger posed by the highly-contagious and deadly virus. This work had to be performed in person and simply could not be performed due to the pandemic. This unemployment began in June 2020 when she opened her claim for benefits and continued through November 2020, impacting her income stream throughout that time period. Claimant is otherwise able to work and available for work within the meaning of applicable State law. The underlying decision must be reversed, and claimant shall be awarded benefits consistent with this decision. Those benefits shall be applied to the existing overpayment of regular unemployment benefits to the fullest extent.

DECISION:

The Iowa Workforce Development decision dated January 4, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is reversed.



Elizabeth A. Johnson
Administrative Law Judge

October 26, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.