

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDIN OBIC
Claimant

APPEAL 20A-DUA-00303-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/21/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

On September 2, 2020, the claimant filed an appeal from the Iowa Workforce Development decision dated August 8, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits. A telephone hearing was held on October 14, 2020. Claimant was properly notified of the hearing. The claimant participated personally. Claimant's Exhibit A and Department's Exhibit D-1 were entered into the record.

ISSUE:

Is the appeal timely?
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 a claim for state unemployment insurance benefits with an effective date of June 21, 2020. Iowa Workforce Development issued a monetary determination finding claimant lacked sufficient earnings to qualify for regular unemployment insurance benefits.

On August 8, 2020, claimant applied for Pandemic Unemployment Assistance (PUA) benefits. Claimant is a self-employed truck driver. Claimant operates out of a truck he owns. Claimant's customers are who he is connected with through an independent dispatcher whom he calls for available loads.

In March 2020, the United States declared a public health emergency based on the COVID 19 pandemic. At that time, claimant's business decreased. From April 4, 2020 through May 17, 2020, claimant had no work at all. Claimant would call the dispatch to see about various routes, but there was nothing available. This is because most of the normal customers had suspended or significantly reduced operations because of the pandemic. While work is sometimes more or less busy, this is the first time no work was available to the claimant. After May 17, work was still slow, but began to steadily pick up.

A decision denying claimant PUA benefits was mailed on August 10, 2020. It contained a warning that an appeal must be filed by August 20, 2020. On August 17, 2020, claimant took a driving job that took him away from home until September 1, 2020. Claimant had not received his PUA determination prior to leaving and did not have anyone available to check his mail for him while he was away. When claimant returned on September 1 and saw the determination, he immediately filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant did not receive the denial decision. The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received prior to the appeal deadline. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal immediately upon discovering the disqualification and learning of his appeal rights. Therefore, the appeal shall be accepted as timely.

The next issue to be decided is whether the claimant qualifies for benefits. For the reasons set forth below, the Iowa Workforce Development decision dated August 8, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is modified in favor of the claimant.

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(a), (b), (c), (d), and (h) provide as follows:

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.

In the Department of Labor's Unemployment Insurance Program Letter No. 16-20, Change 2, it states:

b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(l)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a "significant diminution of work as a result of COVID-19" may be eligible for PUA.

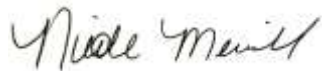
With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

The administrative law judge finds claimant was unemployed, partially unemployed, or unable or unavailable to work because of COVID-19 OR 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 and is unable or unavailable to work because of COVID-19.

Specifically, work was not available to the claimant for the six-week period beginning April 5, 2020 and ending May 16, 2020 because his customers' places of business were closed or working at reduced capacity for reasons related to the pandemic during this time. Claimant was otherwise able to work and available for work within the meaning of applicable State law. Claimant is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. Telework with pay was not available. Claimant was not receiving paid sick leave or other paid leave benefits. While claimant's workload may have been less than normal after May 16, he was able to continue working as of that date. The loss of revenue from that point forward was not directly caused by the pandemic. It was the result of a longer chain of events precipitated or exacerbated by COVID 19. As such, benefits are allowed for the six-week period ending May 16, 2020, but not prior to or after that period in accordance with subsection (kk).

DECISION:

The Iowa Workforce Development decision dated August 8, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is modified in favor of the claimant. Benefits are allowed for the six-week period ending May 16, 2020.



Nicole Merrill
Administrative Law Judge

October 29, 2020
Decision Dated and Mailed

nm/sam