

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY MAREK
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 21A-DUA-01494-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

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

ISSUE

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is eligible Pandemic Unemployment Assistance.

STATEMENT OF THE CASE | FINDINGS OF FACT

On March 29, 2021, 2021 (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated December 10, 2020, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA). The claimant also filed an appeal (21A-UI-09041-JD-T) from an Iowa Workforce Development determination that claimant was not eligible for regular Unemployment Benefits based on claimant Voluntary Quitting her employment from Iowa Clinic. For the reasons stated in appeal 21A-UI-09059-JD-T the claimant was deemed to be eligible for regular unemployment benefits.

Official notice was taken of the administrative record in this appeal and 21A-UI-09059-JD-T.

Based on the finding that the claimant is eligible for regular Unemployment benefits a formal hearing on appeal 21A-DUA-01494-JD-T is not required.

The appeal in this case was not timely filed. The determination denying the Claimant's PUA claims was dated December 10, 2020. The deadline for filing the appeal of that determination was December 21, 2020. The PUA denial was also combined with the Appeal in 21A-UI-09059-JD-T that was timely filed on March 29, 2021.

The PUA appeal is dismissed as untimely. The appeal would have been affirmed on its merits had the appeal been timely filed due to Claimant's eligibility under regular unemployment benefits

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the Iowa Workforce Development decision dated December 10, 2020, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed.

The appeal in this case was not timely filed. The determination denying the Claimant's PUA claims was dated December 10, 2020. The deadline for filing the appeal of that determination was December 21, 2020. The PUA denial was also combined with the Appeal in 21A-UI-09059-JD-T that was timely filed on March 29, 2021.

The appeal would have been affirmed on its merits had the appeal been timely filed due to Claimant's eligibility to receive regular unemployment benefits

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.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Even if the appeal were timely, 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:

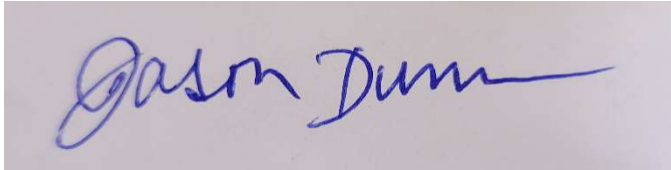
(3) COVERED INDIVIDUAL. — The term “covered individual”—
(A) means an individual who—

- (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;

The claimant is not a “covered individual” based on her eligibility to receive regular unemployment benefits.

DECISION:

The Iowa Workforce Development decision dated December 10, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is AFFIRMED. Claimant's appeal was untimely. Additionally she was awarded regular Unemployment Benefits in Appeal 21A-UI-09059-JD-T.



Jason Dunn
Administrative Law Judge
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June 21, 2021
Decision Dated and Mailed

jd/kmj