

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MALYNDA R RUMBAUGH
Claimant

APPEAL NO. 20A-DUA-00313-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Iowa Code § 96.6-2 – Timeliness of Appeal
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Federal Pandemic Assistance

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 24, 2020, reference 01, decision that denied claimant PUA benefits. After due notice was issued, a hearing was held on October 13, 2020. The claimant did participate and was represented by attorney Joshua Clapp. Claimant's Exhibit C was admitted to the record.

ISSUES:

Whether the appeal is 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: A decision was mailed to the claimant's last known address of record on August 24, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 4, 2020. The appeal was filed on September 4, 2020.

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

Claimant filed the application for PUA on August 24, 2020. The last day claimant worked was March 12 until some time in June or July, 2020 – claimant was unsure as to reopening dates of businesses. Claimant was self-employed as a part-time recipient and purchaser of used clothing that she would then sell to consignment shops. In this position, claimant stated she filed a schedule C 2019 tax return – (The return gives no indication on its face as to how monies were earned.)

Claimant stated that she would receive free donations and make clothing purchases from Bidwell Riverside and Goodwill and then resell the items and personal items she and her family

no longer needed to consignment stores. She further stated that as a result of Covid both the places receiving donations and the consignment shops were not accepting clothing for a period of time so she could not make any more money cosigning clothing.

Claimant did provide self-certification that she was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable to work because she couldn't receive free clothing or purchase second-hand clothing and could not sell the clothing to consignment shops as the businesses were not accepting clothing donations or sales during months of Covid. Telework was not available.

Claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) as she showed no other income.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 not have a reasonable opportunity to file a timely appeal as claimant did file an appeal within the time limits listed on her document received.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to an Agency error or misinformation. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains 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).

For the reasons set forth below, the Iowa Workforce Development decision dated August 24, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed.

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. 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—

(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).

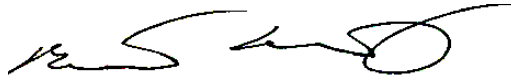
The administrative law judge finds claimant was not unemployed, partially unemployed, or unable or unavailable to work because of COVID-19 OR is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation and is unable or unavailable to work because of COVID-19.

Specifically, claimant was unable or unavailable to work because the places where she chose to sell the clothing she received were not open. Claimant did not show that there were no avenues

available to either receive donated clothing or to consign clothing aside from the two names she provided. The only limitation to claimant's ability to sell clothing was her own imagination. Claimant could have sold through other avenues available including, but not limited to Craigslist or other venues. Additionally, there were other places whereby claimant could receive donated clothing. As claimant cannot satisfy the requirements that her place of employment is closed, claimant has not established that she is eligible for benefits.

DECISION:

The August 24, 2020, reference 01, decision is affirmed. Although the appeal in this case was timely, the claimant has not satisfied conditions necessary to be eligible to receive PUA benefits. The decision of the representative remains in effect.



Blair A. Bennett
Administrative Law Judge

October 15, 2020
Decision Dated and Mailed

bab/scn