

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH HUPP
Claimant

APPEAL NO. 20A-DUA-00879-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 08/30/20
Claimant: Appellant (1)

Section 96.6-2 – Timeliness of Appeal
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

On November 2, 2020, Claimant filed an appeal from an assessment for Pandemic Unemployment Assistance (PUA) benefits dated October 1, 2020, reference 01, which held claimant ineligible for PUA benefits. After due notice, a telephone conference hearing was scheduled for and held on December 14, 2020. Claimant participated. The record consists of claimant's testimony. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely appeal. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On October 1, 2020, a representative issued an assessment for PUA benefits that held that the claimant was which held claimant ineligible for Pandemic Unemployment Assistance (PUA) benefits. The assessment for PUA benefits also states that the decision would become final unless an appeal was postmarked by October 12, 2020, or received by the Appeals Section on that date. The claimant's appeal was sent by email on November 2, 2020.

Claimant could not be sure when she received the assessment for PUA benefits. The assessment was originally sent to her old address. Claimant moved to a new home in June 2020. The decision did not make it to her until after the deadline for appealing the case had past.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the employer timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant)

files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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).

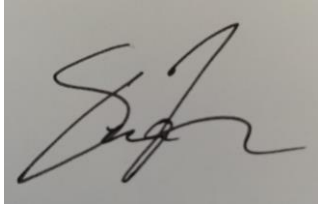
Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 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 an appeal postmarked as timely.

Claimant attributes the delay in filing her appeal with the assessment for PUA benefits being sent to the wrong address. The administrative law judge concludes that claimant's failure to have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claim for unemployment insurance benefits.

DECISION:

The claimant failed to file a timely appeal from the assessment for PUA benefits dated October 1, 2020, reference 01. That decision, which concluded that the claimant was ineligible to receive PUA benefits, remains in full force and effect.



Sean M. Nelson
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January 4, 2021
Decision Dated and Mailed

smn/mh