

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MALIYAH HALVORSEN
Claimant

APPEAL NO. 20A-DUA-00805-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

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

Iowa Code Section 96.6(2) – Timeliness of Appeal
Public Law 116-136, Section 2102 – Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

Maliyah Halvorsen filed a late appeal from the October 8, 2020 Assessment for PUA Benefits that denied Pandemic Unemployment Assistance Benefits, based on the deputy's conclusion that Ms. Halvorsen was not unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified in section 2102(a)(3)(A)(ii)(I) of the CARES Act. After due notice was issued, a hearing was held on December 4, 2020. Ms. Halvorsen participated. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the October 8, 2020 Assessment for PUA Benefits.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 8, 2020, Iowa Workforce Development mailed the October 8, 2020 Assessment for PUA Benefits to claimant Maliyah Halvorsen at her last known address of record. The October 8, 2020 Assessment for PUA Benefits denied Pandemic Unemployment Assistance Benefits, based on the deputy's conclusion that Ms. Halvorsen was not unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified in section 2102(a)(3)(A)(ii)(I) of the CARES Act. Ms. Halvorsen received the decision in a timely manner, sometime between October 8, 2020 and October 10, 2020. Ms. Halvorsen did not note the deadline for appeal set forth on the decision. The decision stated that the decision would become final unless an appeal was postmarked by October 19, 2020 or received by the Appeals Bureau by that date. The decision included clear and concise instructions for appeal. Ms. Halvorsen did not take any steps to file an appeal from the decision by the October 19, 2020 appeal deadline. On October 26, 2020, Ms. Halvorsen completed and transmitted an online appeal through the IWD website. The Appeals Bureau received the appeal on October 26, 2020.

REASONING AND CONCLUSIONS OF LAW:

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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 initial 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 evidence in the record establishes an untimely appeal. Ms. Halvorson received the October 8, 2020 decision in a timely manner and had a reasonable opportunity to file an appeal by the October 19, 2020 appeal deadline. Ms. Halvorson elected to wait until October 26, 2020, a week after the appeal was due, to file her appeal. Because the late filing of the appeal was attributable to Ms. Halvorson's decision to delay action on the matter, and was not attributable to Iowa Workforce Development or the United States Postal Service, there is not good cause to treat that late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the October 8, 2020 decision that denied PUA benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The October 8, 2020 Assessment for PUA Benefits that denied Pandemic Unemployment Assistance Benefits, remains in effect.



James E. Timberland
Administrative Law Judge

December 14, 2020
Decision Dated and Mailed

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