

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SIERRA N SMITH**  
Claimant

**APPEAL 21A-DUA-01322-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

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

PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance

**STATEMENT OF THE CASE:**

On March 9, 2021, claimant Sierra N. Smith filed an appeal from the Iowa Workforce Development decision dated December 21, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits. A telephone hearing was held on May 19, 2021. The claimant was properly notified of the hearing and participated personally. Claimant's Exhibit A – C were received. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

**ISSUE:**

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 previously worked at Wellmark. She resigned her position with Wellmark to accept a position with Global Insight. Her last day at Wellmark was June 5, 2020, and she was scheduled to begin her employment with Global Insight on June 8, 2020. (Claimant's Exhibit B)

On June 8, 2020, claimant learned her start date was delayed for two reasons. The first reason is that several current employees were exposed to or tested positive for COVID-19 and the employer wanted a quarantine period before all staff returned to work. The second is that the employer needed to take additional COVID-19 precautions in the building where the employees worked. Claimant started the job on June 18, 2020.

Claimant filed her initial claim for regular unemployment insurance benefits funded through the State of Iowa with an effective date of June 21, 2020. On November 17, 2020 (reference 02) an unemployment insurance benefits decision was issued finding that the claimant was denied regular unemployment insurance benefits funded by the State of Iowa due to a voluntary quitting of work with Insight Global. Claimant filed an application for PUA benefits in November 2020.

A disqualification decision was mailed to claimant's last known address of record on December 22, 2020. She received the decision within ten days. The decision contained a

warning that an appeal must be postmarked or received by the Appeals Bureau by January 1, 2021. The appeal was not filed until March 8, 2021, which is after the date noticed on the disqualification decision. The decision was issued two days after claimant responded to an IWD representative's request for additional information. She believed IWD did not factor the requested documentation in its decision so she immediately contacted IWD after receiving the decision and explained she had provided the requested information. The representative told the claimant to send her the documentation and she would review it and to wait to hear back. Claimant contacted IWD again but was again told to keep waiting for a response. When claimant contacted IWD in March 2021 to check the status of the application, she was told to appeal the decision because nothing had been done to the original decision. Claimant immediately filed the appeal.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

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, subsection 10, 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. Bd. 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 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Here, claimant contacted IWD immediately upon receipt of the disqualifying decision. She was informed by an agency representative that she should send in the documents again and that she would hear back from the agency. She thus believed she did not need to file an appeal. In March 2021, a representative informed the claimant that she should file an appeal and she promptly did so. Due to the confusing information claimant received, her appeal shall be treated as timely.

The next issue is whether the claimant is eligible for Pandemic Unemployment Assistance (PUA). For the reasons set forth below, the Iowa Workforce Development decision dated December 21, 2020 that determined claimant was not eligible for federal PUA is modified in favor of the appellant.

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. That period was subsequently extended through the week ending March 13, 2021 and, in some cases, through the week ending April 10, 2021. See Consolidated Appropriations Act of 2021. For claims filed after December 27, 2020, the PUA claimant can only be backdated to December 6, 2020 and retroactive benefits may not be awarded prior to that date. See Unemployment Insurance Program Letter No. 16-20, Change 5.

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—

(l) 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).


Attachment I to the United States Department of Labor's Unemployment Insurance Program Letter No. 16-20, Change 1 provides that: An individual does not need to demonstrate good cause to backdate a PUA claim. Rather, the claim must be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(l) of the CARES Act.

In this case, the claimant is ineligible for unemployment insurance benefits funded by the State of Iowa. This is due to a disqualifying decision dated November 17, 2020. Claimant therefore meets the requirements of PL 116-136 Section 2102(a)(3)(A)(i); however, she must also meet the requirements of PL 116-136 Section 2102(a)(3)(A)(ii) to qualify as a "covered individual" under the CARES Act.

PL 116-136 Section 2102(a)(3)(A)(ii)(l) establishes that the claimant must provide self-certification that she is otherwise able to work and available for work within the meaning of applicable State law, except that she is unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in (aa) through (ll). PL 116-136 Section 2102(a)(3)(A)(ii)(l)(gg) provides that covered individuals include those situations where the individual is scheduled to begin a job but is unable to do so due to the pandemic. Claimant was scheduled to begin her job on June 8, 2020, but it was delayed as a result of the pandemic. As such, Pandemic Unemployment Assistance (PUA) benefits are allowed for the two-week period from June 7, 2020 through June 20, 2020, provided claimant is otherwise eligible.

#### **DECISION:**

The claim is timely. The Iowa Workforce Development decision dated December 21, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits is modified in favor of the appellant. Claimant is eligible for benefits for the two-week period ending June 20, 2020, provided she is otherwise eligible.



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Stephanie Adkisson  
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May 28, 2021  
Decision Dated and Mailed

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