

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURNET BREWER
Claimant

APPEAL 21A-DUA-01191-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/14/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
PL 116-136, Sec. 2102 – Pandemic Unemployment Assistance Benefits Eligibility

STATEMENT OF THE CASE:

The claimant, Curnet Brewer, appealed the assessment for Pandemic Unemployment Assistance (PUA) decision dated February 27, 2021 which denied benefits. A telephone hearing was scheduled for May 4, 2021 at 4:00 p.m. The administrative law judge asked the claimant if he would conduct the hearing on April 23, 2021. The claimant granted that request and participated personally. The administrative law judge took official notice of the administrative records. Exhibits A, B, C, D, E, F, G, H, I, J, D-1 and D-2 were entered into the record.

ISSUE:

1. Is the claimant's appeal timely? Are there reasonable grounds to consider it timely?
2. 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 disqualification decision was mailed to claimant's last known address of record on January 21, 2021. (Exhibit D-1) The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 23, 2021. The claimant did not receive the decision. He testified he lived at 357 Coughner Avenue in Dubuque, Iowa. The claimant does not remember when he updated his mailing address. The administrative record claimant information database indicates the claimant's current mailing address was added on February 20, 2021. The claimant's appeal was not filed until February 24, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely and does not have reasonable grounds to be considered 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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.

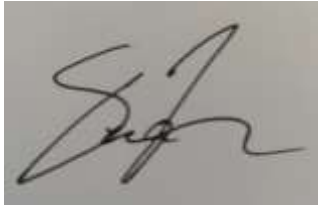
The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 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).

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 claimant did not receive the assessment for PUA benefits within the regular course

of time due to his failure to update his address in a timely manner. This error is not attributable to Iowa Workforce Development or the US Postal Service. As a result, there are not reasonable grounds to find the claimant's appeal timely.

DECISION:

The assessment for PUA benefits decisions dated January 21, 2021 that determined claimant was ineligible for federal PUA is affirmed.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 03, 2021
Decision Dated and Mailed

smn/ol