

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

RICHARD L KROUGH	:	HEARING NUMBER: 22B-UI-07000
	:	
Claimant	:	
	:	
	:	EMPLOYMENT APPEAL BOARD
and	:	DECISION
	:	
G2S SECURE SOLUTIONS (USA) INC	:	
	:	
Employer	:	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.6-2, 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The parties were notified that timeliness of the appeal was at issue. Two members of the Employment Appeal Board reviewed the entire record.

FINDINGS OF FACT:

The decision of the administrative law judge was dated and mailed on February 23, 2021. The Claimant appealed the decision of the administrative law judge to the Employment Appeal Board in a letter received March 15, 2021. Good cause for the late filing was not shown. The appeal was not filed in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6(3) (2019) provides:

The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of the notification or mailing of such decision, further appeal is initiated pursuant to this section.

Section 486 IAC 3.1(2) of the Iowa Administrative Code provides:

Form and time of appeal. A party aggrieved by a decision of the administrative law judge may appeal to the Employment Appeal Board within 15 days from the date of the decision. The appeal shall state the grounds for appeal. The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319. The appeal may also be filed at any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board. The date of the appeal is the date of the fax transmission.

According to 871 IAC 24.35(1), if a United States Postal Service postmark is present that postmark will be used as the filing date of the appeal. If there is no postmark, a postal meter mark will be used to establish the filing date. If neither is available the date of the appeal is the date the appeal was written.

This rule has been construed in Pepsi Cola v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The court stated that the United States Postal Service postmark is governing when both a meter mark and postmark are present on the envelope.

The Claimant did not file a timely appeal to the Employment Appeal Board. The Employment Appeal Board is without jurisdiction to review the merits of the case. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979).

The Employment Appeal Board rule at 486 IAC 3.1(16) provides a late appeal shall be dismissed unless good cause for the delay in filing is shown. Good cause was not shown in this case.

DECISION:

The Employment Appeal Board lacks jurisdiction to rule on the merits of the appeal. The administrative law judge's decision dated February 23, 2021, which denied benefits, is final.

We point out to the Claimant that although the Claimant is denied benefits under state unemployment law, **this does not bar receipt of certain special pandemic related benefits**. In fact, being ineligible from state unemployment benefits is a prerequisite to some of these benefits. Of particular interest to the Claimant is Pandemic Unemployment Assistance [PUA]. That law provides benefits to persons who are unavailable for work due to certain pandemic related reasons, or who lost work as a direct result of the Pandemic. The federal Department of Labor has instructed that **eligible persons would include:**

- f. 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

UIPL 16-20, Attachment 1.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

In most cases, federal law requires all PUA claims to be backdated. The upshot is that if Claimant can make the necessary PUA showing, Claimant may very well be eligible for PUA for any qualifying week. **Our ruling today is no bar to PUA.**

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant offers to return to work, but is rejected. 871 IAC 24.22(2)(j)(1) ('If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.'). This means if the Claimant can get PUA the Claimant would receive the PUA benefit so long as the Claimant is unavailable because on a leave of absence for COVID reasons. (But for PUA claims filed after December 26, 2020 benefits may not be paid for any week prior to December 1, 2020.) Claimant might then receive regular state benefits if Claimant returns and offers services once that COVID leave ends but Claimant is not rehired. The Employer should note it can avoid charges by bringing the Claimant back to work at the end of the COVID leave.

Should the Claimant wish to apply for PUA, you must do so within 21 days of the date of this decision. Information on how to do so is found at:

<https://www.iowaworkforcedevelopment.gov/pandemic-unemployment-assistance-proof-earnings-submission>

James M. Strohman

Ashley R. Koopmans

AMG/sh