

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS F LESTRANGE
Claimant

APPEAL 21A-DUA-00984-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/29/20
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, Thomas LeStrange, appealed the assessment for Pandemic Unemployment Assistance (PUA) decisions dated January 12, 2021 and January 14, 2021 which denied benefits. A telephone hearing was held on April 15, 2021. The claimant participated personally. The administrative law judge took official notice of the administrative records. Exhibits D-1, D-2, and D-3 were admitted into the 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:

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Disqualification decisions were mailed to claimant's last known address of record on January 12, 2021 and January 14, 2021. (Exhibit D-1, Exhibit D-2) The claimant did not receive the decision within ten days because unbeknownst to Iowa Workforce Development he had been living at another address in California since December 2020. The claimant relied on the US Post Office to relay his mail to California, which resulted in a 12 day delay of postage. He received the decision on January 26, 2021. The decisions contained warnings that an appeal must be postmarked or received by the Appeals Section by January 23, 2021 and January 25, 2021, for each separate decision. The appeal was not filed until January 28, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-3)

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is not timely and there are not reasonable grounds to consider it timely. Since the claimant's appeal is not timely, the administrative law judge lacks jurisdiction to evaluate the merits of his claim.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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 moved to California and did not inform Iowa Workforce Development of his change of address. The delay was entirely attributable to this decision, rather than the United States Postal Service or Iowa Workforce Development.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The assessment for PUA benefits decisions dated January 12, 2021 and January 14, 2021 that determined claimant was ineligible for federal PUA are affirmed. PUA benefits are denied.



Sean M. Nelson
Administrative Law Judge
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April 26, 2021
Decision Dated and Mailed

smn/ol