

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEN W WILEY**  
Claimant

**APPEAL 20A-DUA-00778-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 07/12/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.6(2) - Timeliness of Appeal  
PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance

**STATEMENT OF THE CASE:**

On October 22, 2020, the claimant filed an appeal from the Iowa Workforce Development decision dated September 16, 2020 that determined claimant was eligible for federal Pandemic Unemployment Assistance (PUA) benefits effective July 12, 2020. A telephone hearing was held on December 3, 2020. The claimant was properly notified of the hearing and participated personally.

**ISSUES:**

Is the appeal timely?  
Is the claimant eligible for Pandemic Unemployment Assistance effective July 12, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 16, 2020, Iowa Workforce Development mailed a decision allowing Pandemic Unemployment Assistance (PUA) benefits to claimant effective July 12, 2020. The decision warned that an appeal was due by September 26, 2020. Claimant received the decision within the appeal period. Claimant did not file an appeal until October 22, 2020, after the appeal deadline had passed.

The only reason claimant appealed the decision was because he wishes to backdate the claim to the beginning of the pandemic when his business was first affected, on March 17, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 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.

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).

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 unemployment insurance 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. The administrative law judge concludes that failure to follow the clear written instructions 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The appeal of the decision is not timely, but the administrative law judge has not found any requirement that the backdating request on a PUA claim be made within a certain time frame. Therefore, the administrative law judge will remand the case to the Benefits Bureau for consideration of claimant's request.

**DECISION:**

The Iowa Workforce Development decision dated September 16, 2020, that determined claimant is eligible for federal Pandemic Unemployment Assistance (PUA) benefits is affirmed.

**REMAND:**

The claimant's request to backdate the PUA claim to March 17, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for consideration.



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Christine A. Louis  
Administrative Law Judge  
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December 28, 2020  
Decision Dated and Mailed

cal/scn