

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDWARD GREEN
Claimant

APPEAL 20A-DUA-01043-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136 Section 2102 – Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

Edward Green (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated October 24, 2020, reference 01, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA). After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on February 9, 2021. The claimant participated personally.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is eligible Pandemic Unemployment Assistance.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant is a barber that had a shop, Fresh Cutz, that he operated out of a friend's house from February 2019, through February 2020. When that ended, he operated out of a second friend's house from March 1, 2020, through May 31, 2020. The second friend told the claimant he had to close because he did not want to run his lights because there were fewer customers due to Covid-19. Also, the second friend's mother had a medical condition. The claimant was unable to find other work as a barber. The claimant provided a Schedule C from his 2019 tax forms. The form was incomplete. Line 31, his Net profit of (loss) was not calculated. Only his gross appeared on the form.

The claimant's base period is from the first quarter of 2019, through fourth quarter of 2019. He has no wages in his base period. The claimant is not monetarily eligible for regular compensation

or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

The claimant filed the application for PUA and provided self-certification that he was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable to work because "I quit my job as a direct result of COVID-19". He went on to explain "The state shutdown because of covid 19 and now ppl are still practicing social distancing so business is still horrible". The claimant reported on his application that his last day worked was January 31, 2020. Telework was not available.

The claimant's base period is from the first quarter of 2019, through fourth quarter of 2019. He has no wages in his base period. The claimant is not monetarily eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

A disqualification decision was mailed to the claimant's last known address of record on October 24, 2020. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 3, 2020. The claimant called the agency on November 16, 2020, and discovered the decision. The appeal was filed the appeal on November 16, 2020, the day he discovered the decision.

REASONING AND CONCLUSIONS OF LAW:

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, 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 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the decision when he learned of it. Therefore, the appeal shall be accepted as timely.

For the reasons set forth below, the claimant is not eligible for federal Pandemic Unemployment Assistance (PUA).

The CARES Act was established to provide PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. PL 116-136 Section 2102(a), (b), (c), (d), and (h) provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) DEFINITIONS. — In this section:

(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— (I) 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).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID- 19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY. —

(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

(d) AMOUNT OF ASSISTANCE. —

(1) IN GENERAL. — The assistance authorized under subsection (b) for a week of unemployment, partial unemployment, or inability to work shall be— (A)(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; and (ii) the amount of Federal Pandemic Unemployment Compensation under section 2104; and (B) in the case of

an increase of the weekly benefit amount after the date of enactment of this Act, increased in an amount equal to such increase.

(2) CALCULATIONS OF AMOUNTS FOR CERTAIN COVERED INDIVIDUALS. — In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment *shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations*, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 2104.

(emphasis added).

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE. —

Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if— (1) the term “COVID–19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and (2) the term “pandemic” were substituted for the term “disaster” each place it appears in such section 625.

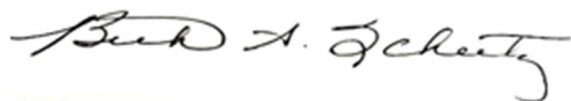
In this case, the claimant is not monetarily eligible for unemployment insurance benefits funded by the State of Iowa pursuant to Iowa Code § 96.4(4)a. This is due to a lack of being paid sufficient wages in insured work during the base period. The claimant therefore meets the requirements of PL 116-136 Section 2102(a)(3)(A)(i); however, **does not** meet the requirements of PL 116-136 Section 2102(a)(3)(A)(ii) to qualify as a “covered individual” under the CARES Act.

The administrative law judge has reviewed the facts and applicable laws carefully, and although the administrative law judge is very sympathetic to the claimant’s situation, he is not a covered individual pursuant to PL 116-136 Section 2102 a(3)(A)(ii) as he is not unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in (aa) through (ll). His unemployment is not a direct result of the COVID 19 public health emergency.

The claimant stopped working because his “second friend” continue his business expenses with fewer customers due to Covid-19. Also, the second friend’s mother was ill. The claimant was unable to find another job as a barber. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason. Pandemic Unemployment Assistance benefits are denied.

DECISION:

The Iowa Workforce Development decision dated October 24, 2020, reference 01, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed. The appeal in this case was timely. The claimant is not considered a covered individual pursuant to PL 116-136 Section 2102(a)3. The claimant is not unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in PL 116-136 Section 2102 a(3)(A)(ii).



Beth A. Scheetz
Administrative Law Judge
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February 19, 2021
Decision Dated and Mailed

bas/kmj