

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SERENA A KREMENAK
Claimant

APPEAL NO. 21A-DUA-01422-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Public Law 116-136, section 2102 – Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

The claimant, Serena Kremenak, filed a late appeal from the December 3, 2020 Assessment for PUA Benefits that *allowed* \$255.00 in weekly PUA benefits for the period beginning June 28, 2020. After due notice was issued, a hearing was held on June 15, 2021. Claimant participated. Exhibits A and B were received into evidence. The administrative law judge took official notice of the Agency administrative record of the claim.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 3, 2020, Iowa Workforce Development mailed the Assessment for PUA Benefits decision to the claimant's Cedar Rapids last-known address of record. The decision allowed \$255.00 in weekly PUA benefits for the period beginning June 28, 2020. The deputy used the effective date of the June 28, 2020 additional claim as the PUA allowance date, rather than the March 22, 2020 original claim date. The PUA decision stated that it would become final unless an appeal was postmarked by December 14, 2020. The PUA decision included clear and concise instructions for filing an appeal from the decision. The PUA decision included a customer service telephone number the claimant could use if she had questions about the decision. The claimant did not file an appeal from the PUA decision by the December 14, 2020 appeal deadline or at any time prior to April 8, 2021.

On April 8, 2021, the claimant filed an online appeal from the December 3, 2020 Assessment for PUA benefits. The claimant followed some, but not all of the instructions for filing the appeal. The claimant erroneously provided June 28, 2020 as the decision date and as the date she had received the decision. The claimant stated: "I need to appeal the Pandemic Unemployment started date. The start date should of been March 22, 2020 not June 28, 2020." The claimant did not respond in her online appeal to the question of why the appeal was being filed after the deadline.

The claimant attributes the April 8, 2021 late filing of her appeal in this PUA matter to Iowa Workforce Development representatives not specifically telling her to file an appeal from the

December 3, 2020 Assessment for PUA benefits decision. The claimant advises that she filed her appeal after an Agency representative directly told her that she needed to file an appeal from the PUA decision. The claimant asserts that all representatives she previously encountered had told her not to worry and that it would all work out. The weight of the evidence indicates such prior discussions addressed the distinction between regular and PUA benefits, but did not include Agency statements that the claimant did not need to appeal the PUA 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the December 3, 2020 Assessment for PUA Benefits decision. The weight of the evidence establishes that the claimant received the PUA decision in a timely manner, that the claimant had a reasonable opportunity to file an appeal by the December 14, 2020 appeal deadline, but that the claimant unreasonably delayed filing the appeal until April 8, 2021. The PUA decision contained all the information the claimant needed to file an appeal by the December 14, 2020 deadline. The law pertaining to appeal rights does not call for an Iowa Workforce Development representative to specifically advise a party to file an appeal. The weight of the evidence does not support the claimant's unsubstantiated assertion that multiple Iowa Workforce Development representatives lulled her into thinking she did not need to file an appeal by the appeal deadline. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the December 3, 2020 PUA decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The December 3, 2020 PUA decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

In the event this decision regarding timeliness of appeal is reversed on appeal, there is sufficient evidence in the record for a decision on the merits without need for further hearing.



James E. Timberland
Administrative Law Judge

September 24, 2021
Decision Dated and Mailed

jet/scn