

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BERNARD YOCHUM
Claimant

APPEAL NO. 20A-DUA-00942-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

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

Section 96.6-2 – Timeliness of Appeal
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

On November 9, 2020, Claimant filed an appeal from an assessment for Pandemic Unemployment Assistance (PUA) benefits dated August 6, 2020, reference 00, which held claimant ineligible for PUA benefits. After due notice, a telephone conference hearing was scheduled for and held on December 31, 2020. Claimant participated. The record consists of claimant's testimony. Official notice is taken of agency records.

ISSUE:

Whether the claimant filed a timely appeal? Whether there is good cause to treat the appeal as timely?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, makes the following findings of fact:

On August 6, 2020, a representative issued an assessment for PUA benefits which held claimant would receive the minimum weekly benefit amount because he did not provide proof of his earnings when he was approved for PUA. The assessment for PUA benefits stated the claimant could provide proof of earnings within 21 days of the date of the assessment for Pandemic Unemployment Assistance (PUA) benefits dated August 6, 2020, reference 00. The assessment for PUA benefits also informed the claimant that the decision would become final unless an appeal was postmarked by August 29, 2020, or received by the Appeals Section on that date. The claimant received the letter on August 7 or August 8, 2020. The claimant's appeal letter is postmarked November 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the employer timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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).

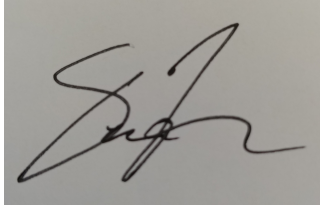
Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 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 an appeal postmarked as timely.

The administrative law judge concludes that failure to have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claim for unemployment insurance benefits.

DECISION:

The claimant failed to file a timely appeal from the assessment for PUA benefits dated August 6, 2020, reference 00. That decision, which concluded that the claimant was eligible for the minimum weekly benefit amount remains in full force and effect.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is displayed within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515) 725-9067

January 19, 2021
Decision Dated and Mailed

smn/kmj