

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLINTON A SMITH
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-DUA-00418-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timely Appeal
PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

Clinton A Smith, the claimant/appellant, filed an appeal from the Iowa Workforce Development decision dated November 20, 2020 that determined he was not eligible for Pandemic Unemployment Assistance (PUA) benefits. An appeal was mistakenly set up from the representative's decision dated April 8, 2020 (reference 01) that found Mr. Smith was not eligible for benefits because he had not been paid insured wages during or after the previous claim year of at least eight (8) times the weekly benefit amount of the previous claim year. The administrative law judge dismissed that appeal in Appeal 21A-UI-00298-DZ-T. Mr. Smith waived notice of hearing in this matter. A telephone hearing was held on February 6, 2021, at 9:00 a.m. Mr. Smith participated and testified. Official notice was taken of the administrative record.

ISSUES:

Did Mr. Smith file his appeal on time?
Is Mr. Smith eligible for Pandemic Unemployment Assistance benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Smith at the correct address on November 20, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by December 3, 2020. Mr. Smith received the decision the late afternoon of December 4, 2020. Mr. Smith appealed the decision as soon as he was able to. He appealed via fax on December 7, 2020. The appeal was received by Iowa Workforce Development on December 7, 2020.

The administrative law judge further finds: Mr. Smith is currently employed at Papa John's Pizza as a part-time employee. He began this employment on February 2, 2020.

Prior to this job, Mr. Smith last worked the first week of December 2020. On November 24, 2020, Council Bluffs Staffing told Mr. Smith they had an assignment for him but the assignment did not begin until the first week of December 2020. Mr. Smith worked for one week and was injured. The employer told Mr. Smith he needed a doctor's note to return to work. Mr. Smith chose to look for other employment. Prior to this job, Mr. Smith last worked in December 2019.

Mr. Smith self-quarantined, on advice of a medical professional, for about four days before he began the assignment with Council Bluffs Staffing during the first week of December 2020. Mr. Smith previously self-quarantined in March, July and September 2020 due to exposure to COVID-19.

Mr. Smith has not had any symptoms of COVID-19. No one in Mr. Smith's household has tested positive for COVID-19. Mr. Smith has not scheduled to begin new employment, which was cancelled due to Covid-19. Mr. Smith does not require childcare in order to attend work.

Mr. Smith was eligible for and received a combination of REGULAR unemployment insurance (UI) benefits, Pandemic Emergency Unemployment Compensation (PEUC) benefits, Extended Benefits (EB) and Federal Pandemic Unemployment Compensation (FPUC) benefits from March 29, 2020 through October 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Smith's appeal was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (a) If transmitted via the United States Postal Service 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 is 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.

- (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or

regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Mr. Smith did not receive the decision in the mail and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Mr. Smith received the decision in the mail late in the afternoon on December 4, 2020. He filed his appeal as soon as he could on December 7, 2020. While Mr. Smith's appeal was submitted after the deadline, his delay was due to delay or other action of the United States Postal Service. Mr. Smith's appeal is considered filed on time.

For the reasons that follow, the administrative law judge concludes:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, Sec. 2102 provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19.

The issue to be determined here is whether claimant is a "covered individual" who is eligible to receive benefits within the meaning of applicable law.

Section 2102 of the CARES Act describes a covered individual as follows:

(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

(II) 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 (I); 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)(I).

Mr. Smith was eligible for REGULAR unemployment insurance (UI) benefits, PEUC benefits, EB and FPUC benefits from March 29, 2020 through October 24, 2020. Therefore, Mr. Smith is not eligible for PUA benefits during this time period

Mr. Smith self-quarantined, on advice of a medical professional, for about four days during the week of November 29, 2020 – December 5, 2020. Mr. Smith meets the eligibility requirements of subparagraph (ff) and is eligible for PUA benefits during this time period.

Mr. Smith does not meet any of the other eligibility requirements outlined above.

DECISION:

Mr. Smith's appeal is filed on time. The Iowa Workforce Development decision dated November 20, 2020 that determined Mr. Smith was not eligible for Pandemic Unemployment Assistance (PUA) benefits is modified in favor of appellant, Mr. Smith. Mr. Smith is eligible for PUA from November 29, 2020 through December 5, 2020 pursuant to subparagraph (ff).



Daniel Zeno
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February 22, 2021
Decision Dated and Mailed

dz/ol