

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DENNIS W MICHAEL**  
Claimant

**APPEAL 21A-DUA-00517-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10/11/20  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timely Appeal  
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance  
20 CFR 625 – Disaster Unemployment Assistance

**STATEMENT OF THE CASE:**

Dennis W Michael, the claimant/ appellant, filed an appeal from the Iowa Workforce Development decision dated December 21, 2020 that determined he was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Mr. Michael was properly notified of the hearing. A telephone hearing was held on March 10, 2021, at 4:00 p.m. Mr. Michael participated in the hearing. Official notice was taken of the administrative record.

**ISSUES:**

Did Mr. Michael file his appeal on time?  
Is Mr. Michael eligible for Pandemic Unemployment Assistance (PUA) benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Michael at the correct address on December 21, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 1, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. January 1, 2021 was a legal holiday; therefore, the deadline was extended to Monday, January 4, 2021. Mr. Michael received the decision on January 2, 2021. Mr. Michael is not tech savvy so he asked someone to help him file his appeal. Mr. Michael appealed the decision online on January 8, 2021. The appeal was received by Iowa Workforce Development on January 8, 2021.

The administrative law judge further finds that Mr. Michael was last employed in 2018. He worked full-time at Harrison Truck Center. His employment was terminated during his probationary period due not being a good fit for the employer. Mr. Michael then began doing odd jobs, including tinting cars, repairs cars and deck repairs. Mr. Michael considers himself self-employed.

Mr. Michael has had no COVID-19 symptoms. No one in his household has tested positive for COVID. Mr. Michael has been advised by his wife's doctor to social distance and stay away from people due to his wife's underlying health conditions but he has not been advised by a medical professional to self-quarantine. Mr. Michael does not provide care for any children or adults. Mr. Michael has not been scheduled to commence a new job that was cancelled due to COVID-19. None of Mr. Michael's suppliers have closed due to COVID-19.

Mr. Michael self-certified his income by providing his 2019 and 2020 income tax returns.

Mr. Michael is not eligible for regular unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that Mr. Michael'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. Michael received the decision in the mail after the appeal deadline. The notice provision of the decision was invalid. Mr. Michael's delay was due to him not being tech savvy and needing someone to help him file his appeal. Mr. Michael's delay was for good cause. Mr. Michael's appeal is filed on time.

The administrative law judge further 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—

(l) 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).

20 CFR 625.2(n) and (u) provide:

(n) Self-employed individual means an individual whose primary reliance for income is on the performance of services in the individual's own business, or on the individual's own farm.

(u) Wages means remuneration for services performed for another, and, with respect to a self-employed individual, net income from services performed in self-employment.

Mr. Michael has failed to establish that he is a self-employed person. Mr. Michael's tax returns show no income from services he performed. To meet the requirements of the law, a person must show they are a self-employed person who is unemployed. Mr. Michael has failed to do. PUA benefits are denied

**DECISION:**

Mr. Michael's appeal is filed on time. The Iowa Workforce Development decision dated December 21, 2020 that determined Mr. Michael was not eligible for Pandemic Unemployment Assistance (PUA) benefits is affirmed.



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Daniel Zeno  
Administrative Law Judge  
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March 15, 2021  
Decision Dated and Mailed

dz/kmj