

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBIN D LEER
Claimant

APPEAL 21A-DUA-01833-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/14/20
Claimant: Appellant (1)

PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance
20 C.F.R. § 625 – Disaster Unemployment Assistance
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal of the cessation of her Pandemic Unemployment Assistance (PUA) benefits. The only decision from Iowa Workforce Development regarding claimant's PUA benefits is a decision allowing such benefits, dated August 17, 2020. The appeal was docketed based on claimant's request for review of the cessation of the benefits. A telephone hearing was held on November 3, 2021. The claimant was properly notified of the hearing and participated personally. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant eligible for continued PUA benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. On August 17, 2020, a decision issued by Iowa Workforce Development determined that claimant was eligible to receive PUA benefits, effective March 1, 2020. Claimant has filed weekly continuing claims beginning in early 2020, and persisting through the week on which Iowa withdrew its participation in the federal COVID relief programs, on June 12, 2021. Claimant received a lump-sum payment during the benefit week ending August 22, 2020. Thereafter, weekly payments were made through the week ending April 3, 2021, at which point payments stopped.

When claimant stopped receiving payments, she began calling Iowa Workforce Development to try to determine why. She received various answers to her inquiries, but never began receiving payments again. On one occasion, she was told that a new Iowa Workforce Development representative entered something into her claim incorrectly, and it would need to be remedied

before payments would start again. Claimant was told to continue filing weekly claims. Payments never resumed.

Finally, claimant went into the Ottumwa office of Iowa Workforce Development, where she was told that her claim had been “switched off” and she needed to file an appeal. The representative helped her with how to do that. She also called the Appeals Bureau for guidance.

An entry in KLOG indicates that, in August 2021, Iowa Workforce Development attempted to send an email regarding the PUA claim to claimant. However, the email did not go through. Claimant states that her email is often mistyped, and she was not surprised that the email did not get to her.

The DUA2 claim detail indicates that claimant’s benefit was slated to end March 27, 2021. It does not appear that any of the correspondence sent to claimant communicated this end date to her.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); *see also In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

First, the administrative law judge notes that no decision regarding the cessation of claimant's benefits ever went to claimant in order to identify an appropriate decision date by which to measure timeliness. However, regardless, any delay by claimant in submitting an appeal of this issue was caused and perpetuated by the Department itself. Claimant was not told for months that she needed to file an appeal, and she had no reason to know she should, given that she had received no decision that was adverse to her. Instead, she was told that her payments would restart if she continued to file claims. It was not until claimant visited the Ottumwa office that she was informed that her claim was invalid and she needed to file an appeal. She worked to file her appeal timely after she received this correct information. The appeal shall be accepted as timely.

The next issue to be considered is whether claimant is eligible to receive benefit payments between the week of April 4, 2021, and June 12, 2021. For the following reasons, the administrative law judge concludes she is not.

On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 was signed into law and included the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act created a new temporary federal program entitled Pandemic Unemployment Assistance (PUA) that, in general, provided up to 39 weeks of unemployment benefits and provided funding to states for the administration of the program.

The Continued Assistance to Unemployed Workers Act of 2020 extended the length of the PUA program from 39 weeks to 50 weeks, subject to limitations on the dates in which the additional 11 weeks could be added. On March 11, 2021, the American Rescue Plan Act (ARPA) was enacted and extended the PUA programs to weeks of unemployment ending on or before September 6, 2021. On May 11, 2021, State of Iowa Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa was the week-ending June 12, 2021.

The CARES Act was specifically designed to mitigate the economic effects and consequences of the COVID-19 public health emergency including providing temporary benefits for individuals who were not eligible for regular State funded unemployment insurance benefits. The provisions of the CARES Act operate in tandem with the eligibility requirements of the Federal-State Unemployment Insurance program.

If a State agreed to administer the program, that State was tasked with the responsibility to ensure program integrity. These functions included conducting audits, investigation, and other oversight activities to ensure adherence to existing unemployment insurance laws and policies, as well as ensure proper adherence to the CARES Act requirements.

In order to be a covered individual who was eligible for PUA benefits, that individual could not be eligible for regular unemployment insurance benefits, or extended benefits under State or Federal

law, or Pandemic Emergency Unemployment Compensation (PEUC) under the CARES Act. Covered individuals could include those who are self-employed, gig workers, those seeking part-time employment, and individuals lacking sufficient work history.

In order to be a covered individual who was eligible for PUA benefits, that individual could not have the ability to telework with pay or receive paid sick leave or other paid leave benefits that exceeded their weekly-benefit amount, plus \$15.00. Lastly, in order to be a covered individual who was eligible for PUA benefits, that individual must establish that they were otherwise able to work and available for work within the meaning of applicable State law, except that they were unemployed, partially unemployed, or unable or unavailable to work due to one of the COVID-19 related reasons identified in Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

The issue to be determined here is whether claimant is a “covered individual” 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

(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).

The United States Code authorizes the Secretary of the United States Department of Labor to enter into agreements with states to administer Pandemic Unemployment Assistance (PUA) benefits under the CARES Act. PL 116-136, Sec. 2102(f). The United States Department of Labor has issued operating instructions to states in implementing section 2102 of the CARES Act. Iowa Code § 96.11 mandates that Iowa Workforce Development “shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter. . .” When implementing section 2102, the operating instructions direct states to first consult section 2102 of the CARES Act and then the operating instructions. When both are silent, states should refer to section 625 of title 20, Code of Federal Regulations. When consulting the regulations, the term

“COVID-19 public health emergency” is to be substituted for the term “major disaster” and the term “pandemic is to be substituted for the term “disaster.”

In reviewing the administrative record and considering claimant’s testimony, the administrative law judge concludes that claimant has exhausted the total benefit weeks for which she was eligible. Claimants are eligible for up to 50 weeks of PUA benefits, subject to certain limitations. Claimant has received 50 weeks of benefits. Because claimant has received the maximum number of weeks of PUA benefit that can be properly allotted to her, benefits after the week ending April 3, 2021, must be denied, and the cessation of those benefits is affirmed.

DECISION:

The claimant’s appeal is timely. The cessation of claimant’s Pandemic Unemployment Assistance benefit as of April 3, 2021, is affirmed. The claimant’s request for continued PUA benefits after that date is denied.



Alexis D. Rowe
Administrative Law Judge

December 3, 2021
Decision Dated and Mailed

ar/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for PUA benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>