

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHY CARDOZA
Claimant

APPEAL NO. 21A-DUA-01062-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/03/21
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, Kathy Cardoza, filed a late appeal from the January 9, 2021 Assessment for PUA Benefits decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant had failed to provide the documentation required to determine eligibility for PUA benefits. After due notice was issued, a hearing was held on April 21, 2021. The claimant participated. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the January 9, 2021 Assessment for PUA Benefits.

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 January 9, 2021, Iowa Workforce Development mailed the January 9, 2021 Assessment for PUA Benefits to the claimant at her last-known address of record. The decision denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant had not provided the documentation required to determine eligibility for PUA benefits. The decision stated that the decision would become final unless an appeal was postmarked by January 21, 2021 or was received by the Appeals Section by that date. The claimant received the decision in a timely manner, prior to the deadline for appeal. The claimant concluded it was pointless to file an appeal until she had proof of income. The claimant did not take steps to file an appeal by the appeal deadline. On February 11, 2020, the claimant telephoned Iowa Workforce Development, spoke with an Agency representative, and then completed an online appeal. The claimant had just filed her 2020 tax return and thought she had enough proof of income to proceed with an appeal.

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).

The claimant's appeal from the January 9, 2021 Assessment for PUA Benefits was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the January 21, 2021 deadline, but did not take steps to file an appeal until February 11, 2021. Because the late filing of the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service, 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 January 9, 2021 decision that denied PUA benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The January 9, 2021 Assessment for PUA Benefits decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant failed to provide the documentation required to determine eligibility for PUA benefits, remains in effect.



James E. Timberland
Administrative Law Judge

April 26, 2021
Decision Dated and Mailed

jet/ol