

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW D ROBY
Claimant

APPEAL 20A-DUA-00936-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/21/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Andrew D Roby, the claimant/appellant, filed an appeal from the Iowa Workforce Development decision dated September 22, 2020 that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Claimant was properly notified of the hearing. A telephone hearing was held on December 29, 2020, at 10:00 a.m. Claimant participated and testified. Cheryl Black, the claimant's mother, and Jennifer Evans, one of the claimant's customers and a friend, testified for the claimant. Official notice was taken of the administrative record.

ISSUES:

Did the claimant file his appeal on time?
Is the claimant eligible for PUA benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on September 22, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 3, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. October 3, 2020 was a Saturday; therefore, the deadline was extended to Monday, October 5, 2020. Claimant did not receive the decision. Claimant contacted Iowa Workforce Development multiple times to inquire about the decision. On November 5, 2020, claimant learned that he was denied PUA benefits and appealed the decision online the same day. The appeal was received by Iowa Workforce Development on November 5, 2020.

The administrative law judge further finds: The claimant is self-employed. His business, Graphals, is incorporated and sells specially made, fitted gold teeth aka grillz, custom clothing, apparel and decals. The claimant operated the business out of a shop located at 1810 2nd Avenue in Des Moines, Iowa for the past five years.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. The claimant had a clothing deal with Harding Middle School in Des Moines. This was one of the biggest sources of income for the claimant's business. The deal ended in March 2020 when the school closed due to the pandemic. Many of the suppliers to the claimant's businesses, particularly the suppliers overseas, also closed due to the pandemic. Multiple customers had pre-orders grillz and cancelled their orders due to the pandemic. Eventually, the claimant was forced to close his shop, but not his business, on August 20, 2020 due to lack of business because of the pandemic.

Claimant is the one of the caregivers of his five children. The claimant's children's school closed in March 2020. The claimant brought the children to his shop and was able to continue working but not at 100 percent.

Claimant has not had symptoms of Covid-19. No one in claimant's household has been diagnosed with Covid-19. Claimant has not been advised by a medical professional to quarantine due to Covid-19. Claimant has not scheduled to begin new employment, which was cancelled due to Covid-19.

Claimant is self-employed and has no insured wages for his self employment in his monetary record. Therefore, claimant is not eligible for regular unemployment insurance benefits with regards to his self employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant's appeal was timely.

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).

Claimant 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. Claimant appealed the decision online on November 5, 2020, the very day he learned that he was denied PUA benefits. The appeal was received by Iowa Workforce Development on November 5, 2020. While claimant's appeal was submitted after the deadline, claimant's delay was due to delay or other action of the United States Postal Service. Thus, claimant's appeal is considered timely.

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

(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)(I).

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 the Department of Labor’s Unemployment Insurance Program Letter No. 16-20, Change 2, it states

- b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA.

With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

In this case, claimant is not eligible for UI. Claimant experienced a significant diminution of services because of the COVID-19 pandemic health emergency and is therefore eligible for PUA benefits under subsection (kk) effective June 21, 2020. Claimant must make weekly continued claims in order to receive benefits.

DECISION:

Claimant's appeal is timely. The Iowa Workforce Development decision dated September 22, 2020 that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits is reversed. Claimant is eligible for PUA effective June 21, 2020 pursuant to subparagraph (kk).



Daniel Zeno
Administrative Law Judge

January 20, 2021
Decision Dated and Mailed

dz/mh