

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA J STINES

Claimant

APPEAL 20A-DUA-00901-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/03/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136 Section 2102 – Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

Kayla Stines (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated August 14, 2020, reference 02, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA). After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on December 17, 2020. The claimant participated personally.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant is a co-owner of Two Girls, One Bucket Cleaning Services with Coral Toven. The business provides approximately twenty-six residential cleaning service appointments to clients per month.

In March 2020, when COVID-19 started, clients did not want the service in their homes. As of March 15, 2020, the business had only fourteen appointments. All other appointments cancelled in March 2020, due to COVID-19. All clients cancelled appointments from April 2020, through October 2020. In November 2020, twenty-two clients canceled appointments.

The claimant filed the application for PUA and provided self-certification that she was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable to work because "My place of employment is closed as a direct result of the COVID-19 public health emergency." Telework was not available.

The claimant's base period is from the first quarter of 2019, through fourth quarter of 2019. In the first quarter of 2019, she has \$1,057.00 in wages from Tri-State Nursing Enterprises. She has no other wages in her base period. The claimant is not monetarily eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

A disqualification decision was mailed to the claimant's last known address of record on August 14, 2020. The decision was received by the claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 24, 2020. On August 25, 2020, the claimant took her appeal letter to Office One Solution. A worker faxed the appeal but left off one digit in the telephone number. The claimant realized the appeal was not received by the department and refaxed the appeal on November 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

The issue in this appeal is whether the claimant's appeal is timely.

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.

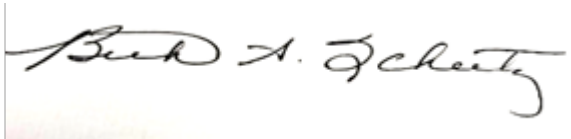
The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 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).

The record in this case shows 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). The 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The appeal is accepted as being made on August 25, 2020, due to the error of the business sender. August 25, 2020, is not within the appeal period.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Iowa Workforce Development decision dated August 14, 2020, reference 02, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed. The appeal in this case was not timely.



Beth A. Scheetz
Administrative Law Judge
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December 29, 2020
Decision Dated and Mailed

bas/scn