

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA CANNADAY
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 21A-DUA-01681-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

Patricia Cannaday (claimant/appellant) filed an appeal (reference 08) from the February 2, 2021 unemployment insurance decision that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA).

After due notice was issued, a hearing was held on July 20, 2021. Claimant participated personally. The hearing was conducted by Administrative Law Judge Jason Dunn. No exhibits were admitted. Administrative Law Judge Andrew Duffelmeyer has reviewed the record in its entirety and makes the following Findings of Fact and Conclusions of Law.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant eligible for Pandemic Unemployment Assistance?

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 above address on February 2, 2021. That was the claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 13, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. The deadline was therefore extended to February 15, 2021.

While no written appeal as received by the Department, claimant credibly testified that she appealed the decision via mail on February 12, 2021. This is reflected by documents submitted by claimant in a PUA application dated March 2, 2021.

Claimant filed the application for PUA on January 22, 2021. The last day claimant worked was March 11, 2020. Claimant was employed at that time as a substitute teacher. When the pandemic began, claimant's physician recommended she self-isolate due to underlying health conditions.

Claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) effective June 7, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The February 2, 2021 unemployment insurance decision that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible as set forth below.

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)(a) 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 on 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.

.....

(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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable

opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 administrative law judge finds the claimant appealed the decision in a timely manner. Any delay was due to error of the USPS or IWD. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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. That period was subsequently extended through the week ending September 4, 2021. See American Rescue Plan Act of 2021.

Claims filed on or before December 27, 2020 can be backdated to January 27, 2020; claims after that time can generally only be backdated to December 1, 2020. However, if an individual filed a regular UI claim on or before December 27, 2020, and the state later determined that the individual is not eligible for regular UI, the state should use the date the claimant filed the regular UI claim as the date of filing for the PUA claim. See Unemployment Insurance Program Letter No. 16-20, Change 4.

The issue to be determined here is whether claimant is a “covered individual” within the meaning of applicable law.

(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—

(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;

(B) does not include—

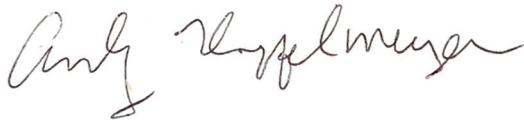
(i) an individual who has the ability to telework with pay; or

(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 administrative law judge finds claimant is unavailable to work because of COVID-19. Specifically, claimant's physician has recommend she self-isolate due to underlying health conditions. She is not eligible for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation effective June 7, 2020. She is otherwise able to work and available for work within the meaning of applicable State law. Because claimant filed a claim on March 29, 2020 and the state later determined she was ineligible for unemployment insurance benefits, the filing of the PUA application is backdated to that date.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The February 2, 2021 unemployment insurance decision that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
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1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 23, 2021
Decision Dated and Mailed

abd/kmj