

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE WITHAM
Claimant

APPEAL 21A-DUA-01890-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/02/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant, Michelle Wickham, filed an appeal from the Iowa Workforce Development decision dated October 21, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits.

After proper notice, a telephone hearing was held on December 21, 2021. The claimant participated personally. The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Appeal letter) was admitted into evidence.

ISSUE:

Is the appeal timely?
Is the claimant eligible for Pandemic Unemployment Assistance?

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 based on the COVID-19 pandemic.

Claimant filed a claim for state unemployment insurance benefits with an effective date of March 15, 2020, and for a second claim year effective March 14, 2021. Claimant last performed work for Cedar Rapids Lighthouse Supper Club. Claimant was denied regular unemployment insurance benefits for the second year based upon not earning sufficient wages to be monetarily eligible. She also remained disqualified from benefits due to voluntarily quitting her last employment and not yet requalifying. Claimant's voluntary quit was attributed to claimant erroneously believing she was discharged after she stated she would not work until her grandson received his routine 3 month immunizations (See 21A-UI-13432-WG-T/21B-13432-EAB).

Then claimant applied for Pandemic Unemployment Assistance (PUA) benefits. Claimant previously applied for PUA benefits in her prior benefit year and was denied on the basis that she was caring for her grandson. The difference between her first application and second application

is that claimant received the COVID-19 vaccine. This allowed her to care for her infant grandson during the day and search for full-time night work. (She ultimately did secure employment at Hy-Vee for nights in the third quarter of 2021, and continues to watch her grandson). Claimant has no other barriers to employment. Claimant has not had symptoms of Covid-19. No one in claimant's household has been diagnosed with Covid-19.

For unknown reasons, claimant's PUA application (which was filed with the assistance of an IWD representative) references her being self-employed. This is incorrect. Claimant has never been self-employed.

An initial unemployment insurance decision (Reference 03) denying claimant's request for Pandemic Unemployment Assistance (PUA) benefits was mailed to claimant's last known address of record on October 21, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 1, 2021. The claimant filed her appeal on November 2, 2021 by fax from her local IWD office (Department Exhibit 1). The appeal was delayed because she went to the local office on November 1, 2021 for help in filing her appeal. She and the representative were unable to pull up or view documents she wanted included in her appeal due to IWD's computer issues. Consequently, claimant did not file her appeal that day and was not advised by the IWD representative that she could file the appeal on November 1, 2021 and send in future exhibits at a later date. The following day, claimant returned to her local office and was able to access her documents to attach to her appeal.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. 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). 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant in this case made a good faith effort to timely file her appeal on November 1, 2021, within the appeal deadline. When she could not access documents she wanted to attach to the appeal (while visiting the IWD office), she was not advised by the IWD representative that she didn't need to include all possible exhibits with the appeal; she just needed to get the appeal itself filed by the deadline. Based on the evidence presented, the administrative law judge concludes the claimant's delay in filing was *due to an Agency error or misinformation* pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge accepts the claimant's appeal as timely filed.

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for Pandemic Unemployment Assistance (PUA) benefits.

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

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."

The administrative law judge has reviewed the facts and applicable laws carefully, and although the administrative law judge is very sympathetic to claimant's situation, she does not meet the definition of an unemployed worker who is entitled to PUA benefits under the law, as outlined above. Claimant's unemployment was not caused by COVID-19, although it may be the result of a longer chain of events precipitated or exacerbated by COVID-19. The request for Pandemic Unemployment Assistance is denied.

DECISION:

The Iowa Workforce Development decision dated October 21, 2021 (reference 03) that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is AFFIRMED. The appeal is accepted as timely. The claimant's request for PUA benefits is DENIED.

Jennifer L. Beckman

Jennifer L. Beckman
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
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Fax 515-478-3528

January 21, 2022

Decision Dated and Mailed

jlb/abd

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/>