

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL L WHITE
Claimant

APPEAL 20A-DUA-00232-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/22/20
Claimant: Appellant (1)**

PL 116-136 Section 2101 – Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance
Iowa Code § 96.4(4) – Determination of Benefits

STATEMENT OF THE CASE:

On August 25, 2020, the claimant filed an appeal from the August 7, 2020 Assessment for Pandemic Unemployment Assistance (“PUA”) Benefits decision that found he was not eligible for PUA benefits. After due notice was issued, a telephone hearing was held on September 28, 2020. Claimant participated personally. Kenneth Engelbart participated as a witness for the claimant. Kathy Engelbart participated as a witness for the claimant. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Is the appeal timely?
Is the claimant eligible for PUA benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of PUA benefits was mailed to the claimant’s correct address of record on August 7, 2020. The claimant did not receive the decision in the mail until after the August 20, 2020 appeal deadline had passed. The claimant filed an appeal with the Appeals Bureau on August 25, 2020, four days after the claimant received the decision in the mail.

The claimant filed his initial claim for regular unemployment insurance benefits funded through the State of Iowa with an effective date of March 22, 2020. Claimant did not have sufficient qualified earnings in the base period in which to become monetarily eligible for unemployment insurance benefits funded by the State of Iowa.

Since 2012 the claimant has been a self-employed individual operating his business where he makes home repairs, cleans homes, assists in residential moving and repairs vehicles. When the COVID 19 pandemic occurred, he lost business because people did not want to use his services. The last day the claimant physically performed work was either March 14, 2020 or

March 15, 2020. The claimant was able to continue operating his business as there was no stay at home order or other order that closed his business or kept it from operating. Telework was never available to him based upon the nature of his business.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 issued 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. Bd. 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 issuing 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).

However, in this case, the claimant's delay in submission was due to delay or other action of the United States postal service because he never received the PUA benefits denial decision until after the appeal deadline had already passed.

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.

As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal shall be considered timely.

The next issue is whether the claimant is eligible for PUA benefits. The administrative law judge finds that he is not eligible for PUA benefits.

Iowa Code section 96.4(4)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's

benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

Claimant's initial claim for benefits was effective March 22, 2020. Claimant was not monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa because he lacked qualified earnings in his base period due to his self-employment.

The CARES Act was established to provide PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. However, the claimant must be a "covered individual" under the Act. PL 116-136 Section 2102(a), (b), (c), and (h) provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) DEFINITIONS. — In this section:

(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**

(II) 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 (I); 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).

(emphasis added).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID– 19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY. —

(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual’s unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE. —

Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if— (1) the term “COVID–19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and (2) the term “pandemic” were substituted for the term “disaster” each place it appears in such section 625.

Disaster Unemployment Assistance was established for the payment of unemployment assistance to unemployed individuals whose unemployment is caused by a major disaster. 20 CFR 625.1.

20 CFR 625.4 provides in pertinent part:

Disaster Unemployment Assistance.

Eligibility requirements for Disaster Unemployment Assistance.

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:

(g) The individual is able to work and available for work within the meaning of the applicable State law; *Provided*, that an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment.

A self-employed individual is defined as an individual whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm. 20 CFR 625.2(n). An unemployed self-employed individual is defined as an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual’s performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in § 625.5(b). 20 CFR 625.2(t).

The question in this case is whether the unemployment is a **direct result of the COVID 19 public health emergency**. With regards to an unemployed self-employed individual, 20 CFR 625.5(b) provides that the unemployment of an unemployed self-employed individual is caused by a major disaster if –

- (1) The individual has a “week of unemployment” as defined in § 625.2(w)(2) following the “date the major disaster began” as defined in § 625.2(e), and such unemployment is a **direct result of the major disaster**, or
- (2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster, or
- (3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster, or

- (4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

(emphasis added).

Unemployment is a direct result of the major disaster as provided for in 20 CFR 625.5(c), which provides:

For the purpose of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and **not the result of a longer chain of events precipitated or exacerbated by the disaster**. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

- (1) The physical damage or destruction of the place of employment;
- (2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or
- (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

(emphasis added).

In this case, the claimant is not monetarily eligible for unemployment insurance benefits funded by the State of Iowa pursuant to Iowa Code § 96.4(4)a. This is due to a lack of being paid sufficient wages in insured work during the base period as he was self-employed during that time period. Claimant therefore meets the requirements of PL 116-136 Section 2102(a)(3)(A)(i); however, he does **not** meet the requirements of PL 116-136 Section 2102(a)(3)(A)(ii) to qualify as a "covered individual" under the CARES Act.

PL 116-136 Section 2102(a)(3)(A)(ii)(l) establishes that the claimant must provide self-certification that he is otherwise able to work and available for work within the meaning of applicable State law, except that he is unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in (aa) through (ll). PL 116-136 Section 2102(a)(3)(A)(ii)(l)(kk) provides that covered individuals include those who meet any additional criteria established by the Secretary for unemployment assistance under this section. Unemployment Insurance Program Letter (UIPL) 16-20 advises that the Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially unemployed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to **suspend such activities**. See Attachment 1 to UIPL No. 16-20, page I-6.

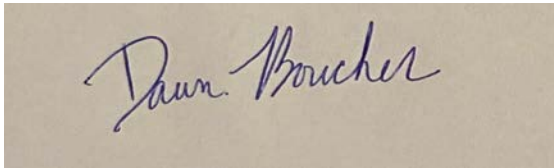
In this case, claimant was never ordered to suspend his self-employment work activities. His business was never closed under any government order. Rather, in this case, the claimant's unemployment was the result of a longer chain of events precipitated or exacerbated by the

COVID 19 public health emergency and not a direct result of the COVID 19 public health emergency itself.

The administrative law judge has reviewed the facts and applicable laws carefully, and although the administrative law judge is very sympathetic to the claimant's situation, he is not a covered individual pursuant to PL 116-136 Section 2102 a(3)(A)(ii). Pandemic Unemployment Assistance benefits are denied.

DECISION:

The claimant's appeal shall be considered timely. The August 7, 2020 Assessment for Pandemic Unemployment Assistance Benefits decision denying PUA benefits is affirmed. The claimant is not considered a covered individual pursuant to PL 116-136 Section 2102(a)3. He is not unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in PL 116-136 Section 2102(a)(3)(A)(ii)(I) (aa) through (II).

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, textured background.

Dawn Boucher
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

db/scn