

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER A MAY
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-DUA-01276-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Heather A May, the claimant/appellant filed an appeal from the Iowa Workforce Development decision dated February 12, 2021 that determined she was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Ms. May was properly notified of the hearing. A telephone hearing was held on May 14, 2021 at 8:00 a.m. Ms. May participated and testified. Official notice was taken of the administrative record.

ISSUES:

Is Ms. May's appeal filed on time?
Is Ms. May 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 Ms. May on February 12, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 25, 2021. Ms. May received the decision on approximately February 20, 2021.

Around this time Ms. May also received an Iowa Workforce Development decision dated February 19, 2021 about Pandemic Emergency Unemployment Compensation benefits. On, or about, March 7, 2021, Ms. May received yet another Iowa Workforce Development decision dated March 4, 2021 about REGULAR unemployment insurance benefits. On March 8, 2021, Ms. May called Iowa Workforce Development to ask about the decisions. The representative explained to Ms. May that she could appeal both the February 12, 2021 PUA decision and the March 4, 2021 REGULAR unemployment insurance decision. Ms. May had not previously contacted Iowa Workforce Development after receiving the PUA decision on approximately February 20, 2021.

Ms. May appealed both decisions online on March 8, 2021. The appeal was received by Iowa Workforce Development on March 8, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. May's appeal in this matter was not filed on time.

Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act creates the temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides for unemployment benefit assistance to any covered individual, as defined by the Act, for up to 39 weeks, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19. Under Section 2102(h) of the CARES Act, 20 C.F.R Part 625 applies to the administration of the PUA program.

The United States Department of Labor's Unemployment Insurance Program Letter No. 16-20, provides:

Consistent with 20 C.F.R 625.11, the terms and conditions of the state law of the applicable state for an individual which apply to claims for, and the payment of, regular compensation apply to the payment of PUA to individuals. The provisions of the applicable state law that apply to claims for PUA include, but are not limited to:

- ...
- Determinations, redeterminations, appeals, and hearings;
-

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).

Ms. May received the PUA decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision is valid. Ms. May did not contact Iowa Workforce Development after she received the PUA decision on February 20, 2021 and Ms. May did not file an appeal on, or before, February 25, 2021. Ms. May's delay in filing her appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No good cause reason has been established for the delay. Ms. May's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. May's appeal was not filed on time. The February 12, 2021 unemployment insurance decision is affirmed.



Daniel Zeno
Administrative Law Judge
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Iowa Workforce Development
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Fax 515-478-3528

May 21, 2021
Decision Dated and Mailed

dz/scn