

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROMAN J LUNA
Claimant

APPEAL 20A-DUA-00999-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/21/20
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:

Roman Luna (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated October 28, 2020, reference 05, 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 February 9, 2021. 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 and, if so, whether the claimant is eligible Pandemic Unemployment Assistance.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for Rees associates from October 18, 2019, to November 18, 2019, as a full-time bagger. He returned to work for one day in early June 2020, but quit because employees were not wearing masks. The claimant had a stroke on June 28, 2020.

On October 12, 2020, the claimant's physician wrote him a note saying, due to his medical circumstances, he should follow C.D.C. guidelines and avoid large gatherings, wear a face mask, social distance and avoid others who are not follow the same strict guidelines. The claimant interpreted this to mean he could not work outside the home. He did not have computer access and could not work at home. The claimant believes he is unable to work at this time because he is afraid to catch the virus and he needs to medically improve after the stroke.

A disqualification decision was mailed to the claimant's last known address of record on October 28, 2020. The claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 8,

2020. The appeal was filed on November 10, 2020. The claimant needed help filing the appeal due to his medical condition.

The claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

The claimant filed the application for PUA and provided self-certification that he was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable to work because "I am unable to reach my place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency". He explained by saying "I am unable to work due to medical issues and Covid 19. I had a stroke on 6/28/20 and have been under doctors (sic) care since." Telework was not available.

REASONING AND CONCLUSIONS OF LAW:

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 claimant did not have sufficient opportunity to appeal the fact-finder's decision because he needed additional time due to a medical condition. The claimant appealed the decision as soon as he had help. Therefore, the appeal shall be accepted as timely.

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

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, 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.

The issue to be determined here is whether claimant is a “covered individual” who is eligible to receive benefits 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

(ll) 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 (l); 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)(l).

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.”

In this case, the claimant does not qualify for regular unemployment insurance benefits. He is not unemployed for any of the reasons related to Covid-19, which are enumerated above. The

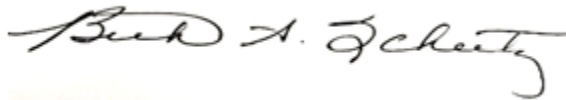
claimant has a general fear or anxiety about working due to Covid-19, but has not been advised by a health care provider to self-quarantine. His physician advised him to follow C.D.C. guidelines. The note does not advise quarantine.

The Department of Labor addressed claimant's situation with the following guidance: "Without having been advised by a health care provider to self-quarantine, and individual who does not go to work due to general concerns about exposure to Covid-19, and who does not meet any of the other Covid-related criteria for PUA, is not eligible for PUA." See UIPL No. 16-20, Change 1, page I-10.

The claimant does not meet the eligibility requirements outlined herein and, thus, does not qualify for PUA benefits.

DECISION:

The Iowa Workforce Development decision dated October 28, 2020, reference 05, that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed. The appeal in this case was timely. The decision of the representative remains in effect.



Beth A. Scheetz
Administrative Law Judge
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February 19, 2021
Decision Dated and Mailed

bas/mh