

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KUTARIUS NORTHERN
Claimant

APPEAL 21A-DUA-01519-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/11/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On May 10, 2021, claimant Kutarius Northern filed an appeal from the Iowa Workforce Development decision dated March 31, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits. The claimant waived notice of the hearing and a telephone hearing was held on June 25, 2021. The claimant was properly notified of the hearing and participated personally. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant's appeal is 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: Claimant was last employed at Debristech in November 2020. On November 20, 2020, claimant gave birth to her child. She remains on maternity leave and caring for her newborn, as the baby has been ill with rhinovirus.

Claimant lives with her sister and was required to quarantine when her sister tested positive for COVID-19 in March 2021.

Claimant filed her initial claim for regular unemployment insurance benefits funded through the State of Iowa with an effective date of October 11, 2020. On April 1, 2021 (reference 05) an unemployment insurance benefits decision was issued finding that the claimant was denied regular unemployment insurance benefits funded by the State of Iowa due to a voluntary quitting of work with Cedar Rapids Hospitality. Claimant filed an application for PUA benefits in November 2020.

A disqualification decision was mailed to claimant's last known address of record on April 1, 2021. She did not receive the decision. The decision contained a warning that an appeal must

be postmarked or received by the Appeals Bureau by April 11, 2021. The appeal was not filed until May 10, 2021, which is after the date noticed on the disqualification decision. On or around May 10, 2021, claimant contacted Iowa Workforce Development when she had not received a response to her PUA application. A representative informed her she had been denied. Claimant promptly filed this appeal upon learning of her denial.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is 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 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, subsection 10, 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. 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 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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal. Claimant did not receive the disqualifying decision in the mail. Once claimant discovered that she had been denied benefits, she promptly filed this appeal. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is eligible for federal Pandemic Unemployment Assistance (PUA) benefits. For the reasons set forth below, the administrative law judge concludes she is not eligible.

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 March 13, 2021 and, in some cases, through the week ending April 10, 2021. See Consolidated Appropriations Act of 2021. For claims filed after December 27, 2020, the PUA claimant can only be backdated to December 6, 2020 and retroactive benefits may not be awarded prior to that date. See Unemployment Insurance Program Letter No. 16-20, Change 5.

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—

(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)(I).

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, she is not a covered individual pursuant to PL 116-136 Section 2102 a(3)(A)(ii) as she is not unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in (aa) through (ll). Claimant was not working because she was on maternity leave and then caring for her sick child. The unemployment is not a direct result of the COVID 19 public health emergency itself under the law. Pandemic Unemployment Assistance benefits are denied.

DECISION:

The appeal is timely. The Iowa Workforce Development decision dated March 31, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits is affirmed.



Stephanie Adkisson
Administrative Law Judge
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July 08, 2021
Decision Dated and Mailed

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