

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLE A SWAIM
Claimant

APPEAL 21A-UI-05885-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/05/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
PL 116-136, Sec. 2107–Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Cole A Swaim, the claimant/appellant filed an appeal from the January 29, 2021 (reference 01) unemployment insurance decision that denied Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits effective August 9, 2020 because he would be monetarily eligible for benefits in the State of Missouri. Mr. Swaim was properly notified of the hearing. A telephone hearing was held on May 3, 2021. Mr. Swaim participated and testified. Official notice was taken of the administrative record.

ISSUES:

Is Mr. Swaim's appeal filed on time?

Is Mr. Swaim eligible for Federal Pandemic Emergency Unemployment Compensation (PEUC)?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Swaim at the correct address on January 29, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 8, 2021. Mr. Swaim received the decision in the mail on February 22, 2021. Mr. Swaim appealed the decision online on February 24, 2021. The appeal was received by Iowa Workforce Development on February 24, 2021.

The administrative law judge further finds: Mr. Swaim is employed with Great Plains Contractors, located in Lancaster, Missouri. Mr. Swaim has not and does not work in Missouri. He works in Iowa. Mr. Swaim filed a claim for regular unemployment insurance benefits funded by the State of Iowa effective January 5, 2020. He filed due to a seasonal layoff. His weekly benefit amount is \$500.00. He exhausted his maximum benefit amount for regular unemployment insurance benefits during the week-ending August 8, 2020.

Mr. Swaim's base period begins October 1, 2018 and ends September 30, 2019. The administrative record shows that Mr. Swaim's earned wages in Iowa from Great Plains Contractors in the fourth quarter of 2018 and the second and third quarters of 2019. The

administrative record also shows he earned wages in Missouri from Great Plains Contractors in the first quarter of 2020 and appears to be monetarily eligible for regular unemployment insurance benefits in Missouri.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Swaim's appeal was filed on time.

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).

Mr. Swaim did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision is invalid. Mr. Swaim's delay in filing his appeal was due to delay or other action of the United States Postal Service. Mr. Swaim's appeal was filed on time.

The administrative law judge further finds Mr. Swaim is not eligible for PEUC benefits in Iowa effective August 9, 2020.

Section 2107 of the CARES Act creates a new temporary federal program called Pandemic Emergency Unemployment Compensation (PEUC) that provides up to 13 additional weeks of benefits to individuals who have exhausted their regular unemployment compensation entitlement and also provides funding to states to administer the program.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law **or any other State unemployment compensation law** or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(emphasis added).

In this case, Mr. Swaim appears to be monetarily eligible for regular unemployment insurance benefits in the State of Missouri based upon his administrative records. Mr. Swain has not established that he is monetarily *ineligible* for regular unemployment insurance benefits in Missouri. As such, Mr. Swaim does not meet the eligibility requirements for PEUC benefits in Iowa effective August 9, 2020.

Note to Claimant: Mr. Swaim may contact Iowa Workforce Development Benefits Bureau if he receives written documentation that he is not monetarily eligible for regular unemployment insurance benefits in the State of Missouri effective August 9, 2020 or thereafter.

DECISION:

Mr. Swaim's appeal is filed on time. The January 29, 2021 (reference 01) unemployment insurance decision denying PEUC benefits in Iowa effective August 9, 2020 is affirmed. Mr. Swaim is not eligible for PEUC benefits in Iowa as he appears to be monetarily eligible for regular unemployment insurance benefits in the State of Missouri.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 12, 2021
Decision Dated and Mailed

dz/ol

Note to Claimant

- This decision determines you are not eligible for PEUC benefits in Iowa. 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 qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to COVID-19.
- **You will need to apply for PUA benefits to determine your eligibility under the program.**
- For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.