

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HASEENA NAPIER**  
Claimant

**APPEAL NO: 21A-UI-23202-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Haseena Napier, filed an appeal to the February 24, 2021 (reference 03) initial decision which denied PEUC benefits in the state of Iowa. A first telephone hearing was scheduled for December 10, 2021. Claimant requested a postponement to obtain legal counsel and the request was granted.

After proper notice, a telephone hearing was conducted on December 28, 2021. The hearing was held together with Appeals 21A-UI-23203-JC-T and 21A-UI-23204-JC-T. The claimant participated personally and represented herself. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted into evidence. The administrative law judge held the record open for the limited purpose to allow claimant to submit documentation. It was received and admitted as Claimant Exhibit A.

**ISSUES:**

Is the appeal timely?

Is the claimant eligible for PEUC benefits in Iowa?

**FINDINGS OF FACT:**

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: The claimant filed an initial claim for regular unemployment insurance benefits funded by the State of Iowa with an effective date of March 15, 2020.

Claimant's monetary eligibility for benefits was based upon considering wages she earned in Iowa and South Dakota. Claimant's weekly benefit amount was \$271.00. Her maximum weekly benefit amount was \$5,676.19. Claimant filed for and received regular unemployment benefits for the period between March 15, 2020 and October 24, 2020, when she exhausted benefits.

Claimant did not do anything differently in making her weekly claims to receive PEUC benefits.

The United States Department of Labor issued operating instructions for the PEUC program. See Unemployment Insurance Program Letter No. 17-20 (April 10, 2020). The operating instructions state that in order to be eligible for PEUC, a claimant must have exhausted all rights to regular compensation under the applicable state or Federal law with respect to the applicable benefit year, have no rights to regular compensation with respect to a week under such law or any other state or Federal law, certify that he or she is not receiving unemployment compensation in Canada, and be able to and available for work. The operating instructions instruct state agencies to check at each quarter change if an individual has enough wages to establish a new benefit year in the State, in another State, or a combined wage claim.

Claimant works primarily as a stagehand through a local union. Based upon claimant's location, she performs work both in Iowa and South Dakota. Claimant also teaches part-time at Western Iowa Tech. Additionally, claimant recently performed work as a temporary enumerator for the US Census Bureau from August to October 2020.

When looking at wages for a claim effective October 25, 2020 (after claimant exhausted regular state benefits in Iowa), administrative records reflect the claimant had wages in Iowa, but also wages in South Dakota. IWD determined claimant would be monetarily eligible in the state of South Dakota for regular benefits if she combined those wages and wages earned in Iowa were transferred to South Dakota. This is called a combined wage claim (CWC). Records reflect claimant was informed that effective March 23, 2021, claimant would no longer be monetarily eligible for regular benefits in the state of South Dakota (Claimant Exhibit A).

An initial decision dated February 24, 2021 (Reference 03) was mailed to claimant's address of record. The initial decision notified claimant that she was not eligible for PEUC benefits in the state of Iowa because administrative records reflected she would be monetarily eligible for regular unemployment insurance benefits in the state of South Dakota. The initial decision contained a warning that an appeal to the decision was due by March 6, 2021. The initial decision also directed claimant to contact IWD customer service if she had questions. Claimant did contact IWD on March 2, 2021 and received incorrect or inaccurate information. She was not directed to file an appeal at the time. Claimant relied upon the information from the IWD representative and engaged in a series of contacts between South Dakota and Iowa (Claimant Exhibit A) before filing her appeal on October 18, 2021 (Department Exhibit 1).

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is the timeliness of claimant's appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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.

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 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 credible evidence presented is that claimant's appeal was delayed due to Agency error or miscommunication pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal is accepted as timely filed.

*For the reasons that follow, the administrative law judge concludes the claimant is not eligible for Federal PEUC benefits in Iowa effective October 25, 2020.*

Section 2107 of the CARES Act created 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.

##### (a) FEDERAL-STATE AGREEMENTS. —

(1) IN GENERAL. — Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

##### (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).

The administrative law judge is sympathetic to the claimant's situation, and recognizes the complexity of dealing with multiple state agencies, wages being transferred to and from state claims, as well as the challenges associated with implementing the PEUC program in 2020-2021 in response to the COVID-19 pandemic.

As explained above, the operating instructions for the PEUC program instruct state agencies to check at each quarter change if an individual has enough wages to establish a new benefit year in the State, in another State, or a combined wage claim. Finally, the operating instructions direct states to advise a claimant who can establish a new benefit year or combined wage claim to file the claim as they will no longer qualify for PEUC.

In this case, claimant appears to be monetarily eligible for unemployment insurance benefits in South Dakota, with a claim that transfers her wages earned in Iowa and combines them with wages earned in South Dakota. That PEUC program does not provide that claimant must be allowed in the other state, as there are other reasons beyond monetary eligibility that a claimant may not be allowed benefits, even though they meet the monetary eligibility requirement. When it comes to unemployment insurance benefits, a claimant can file a claim in any state where they worked and earned insured wages. In this case, claimant worked and earned insured wages in South Dakota and is eligible to file a claim there. The administrative law judge can certainly understand why claimant would rather pursue PEUC benefits in Iowa, but the federal law is clear claimant must exhaust all available state benefits before she is eligible for federal benefits.

**DECISION:**

The February 24, 2021 (reference 03) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not eligible for Pandemic Emergency Unemployment Compensation effective October 25, 2020, due to being monetarily eligible in South Dakota with a combined wages claim.



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

January 28, 2022  
Decision Dated and Mailed

jlb/mh