

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAYSHON A FORNEY
Claimant

APPEAL 20A-UI-13416-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

PL 110-252 § 4001 – Federal Emergency Unemployment Compensation Extension Act
Iowa Code § 96.29 – Extended Benefits
20 CFR 615 – Extended Benefits
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 13, 2020 (reference 09) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 23, 2020, at 3:00 p.m. Claimant participated. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is eligible for Emergency Unemployment Compensation benefits.
Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on October 13, 2020. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 23, 2020. Claimant appealed the decision online on October 27, 2020. The appeal was received by Iowa Workforce Development on October 27, 2020.

The administrative law judge further finds: Claimant filed an initial claim for benefits effective January 5, 2020. Claimant was not monetarily eligible during the base period for his claim year (i.e. fourth quarter 2018 through third quarter 2019). Therefore, claimant requested an alternate base period (ABP), which begins extends from the first quarter of 2019 through the fourth quarter of 2019. During claimant's ABP, he was employed with Inclusion Connection earning \$1,608.00 during the third quarter of 2019 and \$4,452.00 during the fourth quarter of 2019. Claimant earned no other insured wages during his ABP. Claimant exhausted his regular Unemployment Insurance (UI) benefits and Pandemic Emergency Unemployment Compensation (PEUC). Claimant was denied Emergency Unemployment Compensation (EUC)

because his total wages during his ABP were not at least one and a half times his highest quarter of wages during that period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant's appeal was timely.

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).

Claimant did not receive the decision. Therefore, the notice provisions on the decision were invalid. Claimant's delay in submitting his appeal was due to any agency error or misinformation or delay of the United States Postal Service. Claimant's appeal is considered timely.

The next issue to be determined is whether claimant is eligible for EUC benefits (i.e. extended benefits). For the reasons that follow, the administrative law judge concludes claimant is not eligible for EUC benefits.

The Emergency Unemployment Compensation (EUC) program was created by Public Law 110-252, Title VI. This temporary unemployment insurance program provides up to 13 additional weeks of unemployment benefits to certain workers who have exhausted their rights to regular unemployment compensation benefits.

Section 4001(d)(2)(A) of the EUC Act states that persons shall not be eligible for EUC unless they have "20 weeks of full-time insured employment or the equivalent in insured wages" in their base period as determined by the state law implementing the Extended Unemployment Compensation Act of 1970. The method Iowa chose is outlined in Iowa Code § 96.29(1).

Iowa Code section 96.29(1)a-c provides:

Extended benefits.

Except when the result would be inconsistent with the other provisions of this chapter, as provided in rules of the department, the provisions of the law which apply to claims for or the payment of regular benefits shall apply to claims for, and the payment of, extended benefits.

1. Eligibility requirements for extended benefits. An individual is eligible to receive extended benefits with respect to a week of unemployment in the individual's eligibility period only if the department finds that all of the following conditions are met:

a. The individual is an "exhaustee" as defined in this chapter.

b. The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

c. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

In this case, claimant's total wages during the ABP (\$6,060.00) are not greater than or equal to one and a half times claimant's wages during his highest quarter ($1.5 \times \$4,452.00 = \$6,678.00$). Therefore, claimant does not meet the eligibility requirements for EUC benefits.

DECISION:

Claimant's appeal was timely. The October 13, 2020 (reference 09) unemployment insurance decision is affirmed. Claimant is not eligible for EUC benefits.



Adrienne C. Williamson
Administrative Law Judge
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January 15, 2021
Decision Dated and Mailed

acw/mh