

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RENE R SAMANIEGO
Claimant

APPEAL 21A-UI-24504-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 05/03/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
PL116-136, Sec. 2107 – Overpayment of Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On November 4, 2021, Rene Samaniego (claimant/appellant) filed an appeal from the decision dated October 19, 2021 (reference 07) that determined claimant was overpaid Pandemic Emergency Unemployment Compensation in the amount of \$2,534.00 for the seven weeks ending September 5, 2020 based on a decision denying benefits.

A telephone hearing was held on January 4, 2021. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant overpaid Pandemic Emergency Unemployment Compensation (PEUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The administrative record shows claimant received PEUC in the amount of \$362.00 per week for a total of seven weeks, from the benefit week ending July 25, 2020 and continuing through the benefit week ending September 5, 2020. The total amount of PEUC paid during this period is \$2,534.00.

Claimant was subsequently determined to be ineligible for benefits effective May 3, 2020 in a decision dated January 27, 2021. That decision remains in force. See 21A-UI-04458-DB-T.

The Unemployment Insurance Decision was mailed to claimant at the above address on October 20, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 30, 2021. However, if the due date falls on a Saturday, Sunday or legal

holiday, the appeal period is extended to the next working day. October 30, 2021 was a Saturday so the deadline was extended to November 1, 2021. Claimant appealed the decision on November 4, 2021. Claimant did receive the decision and note the deadline to appeal. The delay in appealing was due to claimant receiving the decision just a day or two prior to the deadline.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated October 19, 2021 (reference 07) that determined claimant was overpaid Pandemic Emergency Unemployment Compensation in the amount of \$2,534.00 for the seven weeks ending September 5, 2020 based on a decision denying benefits is **AFFIRMED**.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 administrative law judge finds the delay in appealing was due to error or delay of the United States Postal Service. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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.

(3) EXHAUSTION OF BENEFITS.—For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual’s rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual’s base period; or

(B) such individual’s rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

To be eligible for PEUC, a claimant must (1) have exhausted all rights to regular compensation under the State law or under Federal law with response to a benefit year and (2) have no rights to regular compensation under such law or any other State unemployment compensation law or

to compensation under any other Federal law. The claimant must also be able to work, available for work, and actively seeking work.

The claimant is deemed to have exhausted rights to regular compensation under a State law when no payments of regular compensation can be made under such law because the claimant has received all regular compensation available based on base period wages and/or wages. The claimant will also be deemed to have exhausted rights to regular compensation under a State law when the claimant's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

The administrative record shows claimant received PEUC in the amount of \$362.00 per week for a total of seven weeks, from the benefit week ending July 25, 2020 and continuing through the benefit week ending September 5, 2020. The total amount of PEUC paid during this period is \$2,534.00.

Claimant was subsequently determined to be ineligible for benefits effective May 3, 2020 in a decision dated January 27, 2021. That decision remains in force. See 21A-UI-04458-DB-T.

Because claimant was ineligible for regular unemployment insurance benefits he did not exhaust all right to compensation under state law and was also ineligible for PEUC. As such he was overpaid PEUC in the amount of \$2,534.00.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated October 19, 2021 (reference 07) that determined claimant was overpaid Pandemic Emergency Unemployment Compensation in the amount of \$2,534.00 for the seven weeks ending September 5, 2020 based on a decision denying benefits is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

January 27th, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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.

If this decision determines you have been overpaid federal CARES Act benefits you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.