

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISSE CARREON
Claimant

APPEAL 21A-UI-21853-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/07/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Denisse Carreon, the claimant/appellant, filed an appeal from the June 18, 2021, (reference 02) unemployment insurance (UI) decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits on Ms. Carreon's Iowa claim as of January 3, 2021 because she would be monetarily eligible for REGULAR UI benefits in Nevada. Ms. Carreon was properly notified of the hearing. A telephone hearing was held on November 29, 2021. Ms. Carreon participated and testified. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Carreon's appeal filed on time?
Is Ms. Carreon eligible for PEUC benefits on her Iowa claim?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Carreon at the correct address on June 18, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by July 2, 2021.

Ms. Carreon received the decision in the mail. Ms. Carreon called IWD about the decision but she did not appeal the reference 02 decision. IWD issued two additional decisions finding Ms. Carreon was overpaid Pandemic Emergency Unemployment Compensation (PEUC) benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Carreon received at least one of those decisions. Ms. Carreon filed an appeal online on October 1, 2021. The appeal was received by Iowa Workforce Development on October 1, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Carreon's appeal of the reference 02 decision was not 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).

Ms. Carreon received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Carreon's delay in filing her appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing her appeal before the deadline. Ms. Carreon's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Carreon's appeal of the reference 02 decision was not filed on time. The June 18, 2021 (reference 02) decision is affirmed.



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

December 22, 2021
Decision Dated and Mailed

dz/kmj

NOTE TO MS. CARREON:

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on June 7, 2020.