

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRAVIS J PETERSON
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO. 21A-UI-00048-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/23/19
Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Fed Law PL 116-136, Sec 2107 – Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 24, 2020, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on February 6, 2021. The claimant did participate and was aided by his mother Aubrey Peterson as the claimant has suffered a traumatic brain injury.

Benefits were denied because he would be monetarily eligible for benefits in the State of Colorado.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Whether the appeal is timely?

Is the claimant eligible for Federal Pandemic Emergency Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on June 23, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 3, 2020. The appeal was not filed until December 2, 2020, which is after the date noticed on the disqualification decision. Claimant and his mother stated that he did not receive the decision.

Claimant stated that he did work in Colorado for a couple of weeks. An examination of IWD information indicates that no wages were reported from Colorado to Iowa.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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.

The ten calendar days for appeal begin 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

For the reasons that follow the administrative law judge concludes that the claimant is eligible for Federal Pandemic Emergency Unemployment Compensation at this time because he is not monetarily eligible for regular unemployment insurance benefits in the State of Colorado.

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.

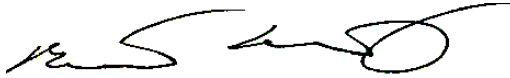
(emphasis added).

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 of 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. 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, it appears claimant is not monetarily eligible for unemployment insurance benefits in Colorado based on a combined wage claim (taking the wages from Colorado and combining those wages with those transferred from Iowa). In this case, Colorado has not reported wages from that state. Therefore, claimant's only potential state to file for and receive PEUC benefits is through Iowa. PEUC benefits are granted, if claimant is otherwise eligible.

DECISION:

The June 24, 2020, reference 06, decision is reversed. The appeal in this case was timely, and the decision of the representative is reversed. Claimant is eligible for PEUC benefits in Iowa as the state of Colorado has not reported any wages earned in that state.



Blair A. Bennett
Administrative Law Judge

February 18, 2021
Decision Dated and Mailed

bab/scn