

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE M DONATH
Claimant

APPEAL 21A-UI-23143-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

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

Iowa Code § 96.6(2) – Filing – Timely Appeal
Public Law 116-136, Section 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On October 14, 2021, Michelle Donath (claimant/appellant) filed an appeal from the decision dated May 28, 2021 (reference 03) that found claimant ineligible for Pandemic Emergency Unemployment Compensation (PEUC) effective December 13, 2020 based on a finding she was eligible for regular unemployment insurance benefits in Illinois.

A telephone hearing was held on December 10, 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. Is claimant eligible for PEUC in Iowa?

FINDINGS OF FACT:

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

Claimant filed an original claim for unemployment insurance benefits in the state of Iowa effective June 7, 2020. She exhausted her unemployment insurance benefits in Iowa in the week ending December 12, 2020. She began receiving PEUC in Iowa effective December 13, 2020 and continuing through May 22, 2021. She received PEUC in the amount of \$232.00 per week for a total of 23 weeks.

A decision was issued on May 28, 2021 finding claimant ineligible for PEUC in Iowa effective December 13, 2020 based on a finding she was eligible for regular unemployment insurance benefits in Illinois.

The administrative record shows claimant earned wages in Illinois in the amount of \$847.00 in the fourth quarter of 2019; \$1,530.10 in the first quarter of 2020; and \$2,040.24 in the second quarter of 2020.

In order to be monetarily eligible for benefits in Illinois a claimant must earn a total of \$1,600.00 in the base period and \$440.00 outside of the highest quarter. Claimant was therefore monetarily eligible for benefits in Illinois effective with the fourth quarter of 2020 when she began receiving PEUC in Iowa effective December 13, 2020. 820 Ill. Comp. Stat. Ann. 405/500.

The delay in appealing was due to an impairment which makes it difficult for claimant to comprehend written information. Claimant appealed shortly after receiving decisions finding she was overpaid.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated May 28, 2021 (reference 03) that found claimant ineligible for Pandemic Emergency Unemployment Compensation (PEUC) effective December 13, 2020 based on a finding she was eligible for regular unemployment insurance benefits in Illinois 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 delay in appealing was due to an impairment which makes it difficult for claimant to comprehend written information. Claimant appealed shortly after receiving decisions finding she was overpaid. The administrative law judge finds there exists good cause reason for the 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.

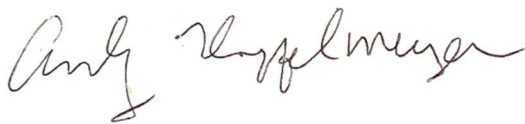
To be eligible for PEUC, a claimant must (1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year and (2) have no rights to regular compensation under such law or any other State unemployment compensation law or to compensation under 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 law judge finds claimant was monetarily eligible for unemployment insurance benefits in Illinois effective December 13, 2020. Because she was monetarily eligible for unemployment insurance benefits in Illinois she did not exhaust her right to regular compensation under state law. Because she did not exhaust her right to regular compensation under state law she was ineligible for PEUC in Iowa.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated May 28, 2021 (reference 03) that found claimant ineligible for Pandemic Emergency Unemployment Compensation (PEUC) effective December 13, 2020 based on a finding she was eligible for regular unemployment insurance benefits in Illinois 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

December 20, 2021
Decision Dated and Mailed

abd/abd

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already 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>.