

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SAMUEL WEBB JR
Claimant

APPEAL 22A-UI-11687-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20
Claimant: Appellant (6)**

Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136 Sec. 2107 - Federal Pandemic Emergency Unemployment Compensation (PEUC)

STATEMENT OF THE CASE:

May 3, 2022, Samuel Webb, Jr., claimant/appellant, filed an appeal from the April 7, 2021, (reference 01) unemployment insurance decision denying claimant PEUC benefits as of 11/22/20 because claimant would be monetarily eligible for regular benefits in South Dakota. After proper notice, a telephone hearing was conducted on June 21, 2022, at 11:00AM. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-11687-DH-T; 22A-UI-11688-DH-T; and 22A-UI-11689-DH-T. Claimant participated personally. The Department did not participate. Judicial notice was taken of the administrative record and DBIN/1.

ISSUE:

Is the appeal timely?
Is claimant eligible for PEUC benefits in Iowa?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant filed a new claim for unemployment insurance benefits with an effective date of March 15, 2020. Claimant filed for and exhausted his regular state funded benefits in Iowa effective the payment for the benefit week ending 11/21/2020 payment.

Claimant then received Pandemic Emergency Unemployment Compensation (PEUC) benefits beginning 11/22/20 through 03/13/21. Claimant filed weekly claims for this period. Claimant did not do anything differently in making his weekly claims to receive PEUC benefits.

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 or 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.

Claimant was working three jobs in 2019. One of the jobs was with Hampton Inn, working at a location in Iowa and at a location in North Sioux City, South Dakota. Based upon claimant's job duties, he earned wages in South Dakota and Iowa. The Iowa Workforce Development representative found claimant had wages in Iowa, but also wages in South Dakota. Claimant acknowledged receiving wages in South Dakota but did not recall exactly how much. IWD determined claimant would be monetarily eligible in the state of South Dakota for regular benefits if he combined those wages and wages earned in Iowa were transferred to South Dakota. This is called a combined wage claim (CWC).

The appeal is from a decision dated April 7, 2021. It lists an appeal deadline of April 19, 2021. Claimant received the decision in April 2021 but does not recall the date he received the decision, other than it was before the deadline to appeal. Claimant timely received the decision. Claimant decided not to appeal. He did not believe he had done anything wrong. He also thought since it said he was denied benefits, that those benefits would stop being sent to him. Now, upon a closer reading, claimant realizes that he did not read the letter as accurately as he should have. The benefits in question had already been sent from 11/22/20 through 03/13/21. Claimant's appeal is dated May 3, 2022 and is a result of him receiving the overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge finds the appeal is not timely.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which

is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins 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).

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 received the decision within ten days of the mailing date and had time to submit his appeal. The decision was timely received by claimant. Claimant decided to not appeal the decision.

Claimant's failure to file a timely appeal the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks 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).

DECISION:

The unemployment insurance decision dated the April 7, 2021, (reference 01) denying PEUC benefits as of 11/22/20 remains in effect as the appeal is not timely and is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

August 25, 2022
Decision Dated and Mailed

dh/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.