

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRANDON RUSS**

Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 24A-UI-06512-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/20  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timely Appeal  
PL 116-136, Sec. 2107 – Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

Brandon Russ, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) October 5, 2020 (reference 13) unemployment insurance (UI) decision. IWD denied Mr. Russ Pandemic Emergency Unemployment Compensation (PEUC) benefits as of June 21, 2020 on his Iowa UI claim because IWD concluded he would be monetarily eligible for REGULAR (state) UI benefits in Nebraska. On July 19, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Russ for a telephone hearing scheduled for August 1, 2024.

The administrative law judge held a telephone hearing on August 1, 2024. The administrative law judge heard Appeals 24A-UI-06512-DZ-T, 24A-UI-06513-DZ-T, 24A-UI-06514-DZ-T and 24A-UI-06515-DZ-T together and created one hearing record. Mr. Russ participated in the hearing personally. The administrative law judge admitted Department's Exhibits 1-7 and Claimant's Exhibit A as evidence.

The administrative law judge concludes Mr. Russ did not appeal on time, so the decision denying him PEUC as of June 21, 2020 stays in place.

**ISSUES:**

Did Mr. Russ appeal on time?

Is Mr. Russ eligible for PEUC benefits on his Iowa UI claim?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the October 5, 2020 (reference 13) UI decision to Mr. Russ at his correct mailing address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Thursday, October 15, 2020.

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<sup>1</sup> Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

Mr. Russ received the decision in the mail in October 2020. Mr. Russ contacted IWD and Nebraska about his UI claim. Nebraska told Mr. Russ that he was not eligible for UI benefits in Nebraska. IWD told Mr. Russ that he could appeal. Mr. Russ did not appeal at this time.

In relevant part on August 3, 2021, IWD mailed Mr. Russ 3 more UI decisions. In the reference 16 UI decision IWD concluded that IWD overpaid Mr. Russ \$6,071.00 in PEUC benefits for 13 weeks between June 21, 2020 and September 19, 2020 because the October 5, 2020 (reference 13) UI decision denied Mr. Russ PEUC benefits as of June 21, 2020. In the reference 17 UI decision IWD concluded that IWD overpaid Mr. Russ \$3,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for 5 weeks between June 21, 2020 and July 25, 2020 because the October 5, 2020 (reference 13) UI decision denied Mr. Russ PEUC benefits as of June 21, 2020. In the reference 18 UI decision IWD concluded that IWD overpaid Mr. Russ \$1,500.00 in Lost Wage Assistance Payments (LWAP) benefits for 5 weeks between July 26, 2020 and August 29, 2020 because the October 5, 2020 (reference 13) UI decision denied Mr. Russ PEUC benefits as of June 21, 2020. The appeal deadline in each of these decisions was Friday, August 13, 2021.

Mr. Russ received these decisions in the mail. He was confused about why he was overpaid. Mr. Russ contacted IWD and the IWD representative told him he could appeal. Mr. Russ did not appeal at this time.

Later, Mr. Russ received decisions from IWD telling him that IWD would take his tax refund to pay off the overpayment. Mr. Russ figured out that IWD would take his state tax refund, but not his federal refund. Mr. Russ did not appeal these decisions.

Mr. Russ applied for UI benefits in June 2024. At this time, Mr. Russ learned that the overpayment still existed. The IWD representative told Mr. Russ that he would have to pay off the overpayment before he could receive UI benefits. The IWD representative also told Mr. Russ that he could appeal the overpayment decisions.

Mr. Russ appealed online on July 17, 2024. The DIAL, UI Appeals Bureau received the appeal the same day.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Russ did not appeal the October 5, 2020 (reference 13) UI decision on time.

Iowa Code § 96.6(2) provides, in relevant 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:

2. 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:
  - (2) 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.<sup>2</sup> Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.<sup>3</sup>

Mr. Russ received the October 5, 2020 (reference 13) UI decision before the appeal deadline and, therefore, could have appealed by the deadline. The notice provision of the decision was valid. Mr. Russ' delay in appealing was not due to an error or misinformation from IWD or due to delay or other action of the United States Postal Service. Mr. Russ has not established any other good cause reason for his delay in appealing. Mr. Russ did not appeal the October 5, 2020 (reference 13) UI decision on time, so the administrative law judge does not have jurisdiction (authority) to decide the other issue in this matter.

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<sup>2</sup> *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

<sup>3</sup> *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).

**DECISION:**

Mr. Russ did not appeal the October 5, 2020 (reference 13) UI decision on time. The October 5, 2020 (reference 13) UI decision that denied Mr. Rus PEUC benefits as of June 21, 2020 is AFFIRMED.



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Daniel Zeno  
Administrative Law Judge

August 5, 2024  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with this 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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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.