

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA L GRIGGS
Claimant

APPEAL 20A-UI-15978-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/02/19
Claimant: Appellant (1)

PL 116-136 – Federal Pandemic Emergency Unemployment Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 20, 2020 (reference 03) unemployment insurance decision that denied Federal Pandemic Emergency Unemployment Compensation benefits effective May 31, 2020 because she would be eligible for regular unemployment insurance benefits in a second benefit year.

The claimant was properly notified of the hearing. A telephone hearing was held on January 29, 2021. The hearing was held together with Appeals 20A-UI-15979-JC-T and 20A-UI-15980-JC-T. The claimant participated personally.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. 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.

ISSUE:

Is the appeal timely?

Is the claimant eligible for Federal Pandemic Emergency Unemployment Compensation?

FINDINGS OF FACT:

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: The claimant filed an initial claim for regular unemployment insurance benefits funded by the State of Iowa with an effective date of June 2, 2019.

Claimant's base period began June 2, 2019 and ended May 31, 2020. Claimant's weekly benefit amount was \$147.00 and she had a maximum benefit amount of \$2,183.20. During the claim year, claimant established an additional claim effective March 15, 2020 and reopened her claim effective April 19, 2020. She exhausted regular unemployment insurance benefits.

Claimant continued to work for Taher Inc. and earned sufficient wages to be monetarily eligible for a second benefit year. Claimant's June 2, 2019 benefit year expired effective May 31, 2020 and she continued to make weekly claims. Claimant has now established a claim with an effective date of May 31, 2020.

An initial unemployment insurance decision (Reference 03) resulting in a denial of PUEC was mailed to the claimant's last known address of record on June 20, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 1, 2020. Claimant did not recall receiving the decision and appealed the decision in conjunction with overpayment decisions she received. She filed her appeal on November 25, 2020. (See Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal. She did.

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

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

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

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.

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. 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, claimant's benefit year for June 2, 2019 expired on May 31, 2020. Claimant was monetarily eligible for regular state benefits for a second benefit year in Iowa, and therefore no longer eligible for PEUC benefits. Therefore, PEUC benefits are denied but claimant may be eligible for regular state-funded benefits under the second benefit year, provided she otherwise meets all requirements.

DECISION:

The June 20, 2020 (reference 03) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not eligible for Pandemic Emergency Unemployment Compensation effective May 31, 2020 because she is monetarily eligible for a second benefit year in Iowa. *This decision denies PEUC benefits. If this decision becomes final, you may have an overpayment of PEUC benefits.*



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

February 16, 2021
Decision Dated and Mailed

jlb/scn

Note to Claimant

This decision determines you are not eligible for PEUC benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

You may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.

You will need to apply for PUA to determine your eligibility under the program.

For additional information on how to apply for PUA go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>.