

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNDSI M DRISH

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-06979-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

C: 03/22/20

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On March 19, 2022, Lyndsi M Drish (claimant/appellant) filed an appeal from the decision dated March 23, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective July 5, 2020, based on a finding that “all available information indicates she would be monetarily eligible for regular unemployment insurance benefits in the state of Illinois.”

A telephone hearing was held on May 4, 2022. The parties were properly notified of the hearing. Exhibits D-1, D-2, A, B, C, D, and E were admitted. The hearing was held jointly with appeal 22A-UI-06981-SN-T and 22A-UI-06982-SN-T. Official notice was taken of the administrative record, including claimant’s wage history. Official notice was taken of the State of Illinois Unemployment Insurance Benefits Handbook.

ISSUES:

- I. Is the appeal timely? Are there reasonable grounds for the appeal to be considered otherwise timely?
- II. Is claimant eligible for Pandemic Emergency Unemployment Compensation?

FINDINGS OF FACT:

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

The claimant filed a claim for unemployment insurance benefits in the state of Iowa effective March 22, 2020. Benefits were allowed and were paid out until they were exhausted in the week ending October 3, 2020. Because her regular unemployment insurance benefits were exhausted, Iowa then began issuing Pandemic Emergency Unemployment Compensation to claimant, beginning with the week ending October 10, 2020. These payments continued through the week ending January 2, 2021. The decision which was appealed was issued two months after PEUC had stopped paying out.

Following is the base period the claimant would have with an original claim date of October 4, 2020. These are all Iowa employers.

	2019/3	2019/4	2020/1	2020/2	2020/3
L & K Martin Ltd	\$150	\$173	\$492	\$51	\$214
TJM QC LLC	\$823				
LBLN LLC	\$915	\$33			
Blackhawk Bowl and Martini			\$3686	\$263	
The Bettplex LLC			\$366	\$0	500

The Department did not participate or submit any evidence for the hearing. The record is devoid of information indicating how the Department determined “all available information indicates [she] would be monetarily eligible for regular unemployment insurance benefits in the State of Illinois.” There is no information in the record indicating what the eligibility requirements are in those states. Wage records for the period in question are only partially available.

The administrative record displays wages earned at Bierstrube at 415 15th Street in Moline, Illinois at 61265, in the fourth quarter of 2020. No other wages from the State of Illinois are visible.

The March 23, 2021 (reference 01) decision appears to have been generated by a December 19, 2021, request for State of Iowa wages by the State of Illinois to explore the possibility of a combined wage claim with an effective original claim date of October 04, 2020. In response to that correspondence, Iowa Workforce Development Department amended its response stating that the State of Illinois could not use the wages displayed above for a combined wage claim because they had previously been used for the claimant’s Iowa claim, which exhausted and led to extension through the PEUC program, as described in preceding paragraphs. The administrative record shows the claimant did not ultimately open a combined wage claim, although her Iowa wages were transferred out on March 24, 2021.

The following section describes the findings of facts necessary to resolve the timeliness issue:

This disqualification decision was mailed to 612 West Third Street in Davenport, Iowa 52801 1013 on March 23, 2021. The claimant did not receive the decision because her address is 612 1/2 West Third Street in Davenport, Iowa 52801 1013. This error is due to a typo on the part of Iowa Workforce Development Department. (Exhibit D-1) The first notices of disqualification the claimant received were the overpayment decisions dated March 11, 2022 (references 02/03). The appeal was sent on March 19, 2022, within the appeal periods of these decisions. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decisions, which were the first notices of disqualification. Therefore, the appeal shall be accepted as timely.

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 claimant did receive the decision.

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 response 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 U.S. Department of Labor has provided guidance on PEUC to state workforce agencies. This guidance provides in part that states "must verify that claimants have no entitlement to regular UC before processing the application for PEUC." It also provides that before accepting a PEUC claim "the state that is taking the claim must review the individual's work history, examine potential entitlement and advise the individual of all filing options." It provides further that "when an individual files an initial claim for PEUC, the State agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum benefit amounts of PEUC payable. If denied PEUC, the individual must be issued a determination that is appealable." See Unemployment Insurance Program Letter No. 17-20, pp. I-8 to I-10.

The evidence indicates the Department did not verify that claimant had no entitlement to unemployment insurance benefits, did not advise her of all filing options prior to accepting the PEUC claim, and did not promptly issue a determination as to her PEUC eligibility. It did not issue a decision as to her PEUC eligibility until it had paid PEUC for approximately six months. When it did finally issue a decision, it did not explain in the decision how it reached the conclusion that she was eligible for regular benefits elsewhere. In fact, it did not find that she was eligible elsewhere but only that "all available information indicates [she] would be." Finally, it failed to present any evidence supporting its contentions at hearing.

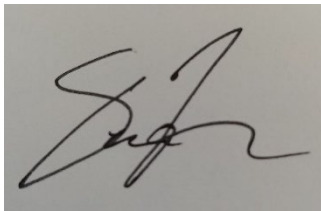
The administrative law judge finds it is the Department's burden to show claimant is ineligible for PEUC due to being eligible for unemployment insurance benefits elsewhere. This is supported by the guidance set forth above. The Department has failed to meet that burden here. The Department has presented no evidence to support its finding that claimant is ineligible for PEUC due to being eligible for unemployment insurance benefits elsewhere, and there is insufficient other evidence available at this time for the administrative law judge to make such a finding.

The administrative law judge believes Iowa Workforce Development is currently eligible for a combined wage claim combining her existing Iowa wage credits and the earnings she received from Bierstrube in the fourth quarter of 2020. The wages from Illinois are too far removed to be an alternative base period for her Iowa wages. Even if it was possible to use these wages in conjunction, the claimant already used them and exhausted them when she was claiming her regular Iowa unemployment insurance benefits. Again, at the very least, Iowa Workforce Development Department has not proven the claimant is eligible for regular benefits in another state or on a combined wage claim.

The administrative law judge therefore concludes claimant is eligible for PEUC effective with benefit week ending July 5, 2020, due to her having exhausted her right to benefits in Iowa and having no right to other benefits elsewhere.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 23, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective July 5, 2020 is REVERSED. Claimant is eligible for PEUC.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 31, 2022
Decision Dated and Mailed

smn/scn