

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MIKE E MCCART
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO. 21A-UI-24631-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/20
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Fed Law PL 116-136, Sec 2107 – Federal Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 1, 2021, reference 02, decision that denied PEUC benefits. After due notice was issued, a hearing was held on January 5, 2022. The claimant did participate and had witness Kim McCart. Claimant's Exhibit A was admitted to the record.

ISSUES:

Whether the appeal is timely?

Is the claimant eligible for PEUC in Iowa?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on October 1, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 11, 2021. The appeal was not filed until November 8, 2021, which is after the date noticed on the disqualification decision. Claimant stated he did not receive the initial decision.

Claimant had earnings at or around \$730.00 that were earned in the state of South Dakota in October of 2020. These earnings were earned outside of the period used to calculate claimant's weekly benefit amount of \$512.00, which was calculated from earnings from the second quarter of 2019 through the first quarter of 2020. Subsequent to that time period, claimant had additional earnings prior to the date of exhausting his Iowa benefits that would qualify him for benefits in South Dakota on a combined wage claim.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The ten calendar days for appeal begin 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially due to an Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains 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).

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 the State of South Dakota.

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.

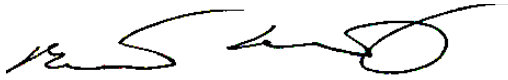
(emphasis added).

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, it appears claimant is monetarily eligible for unemployment insurance benefits in **South Dakota** based on a combined wage claim (taking the wages from **South Dakota** and combining those wages with those transferred from Iowa). The fact that claimant does not live in **South Dakota** and only briefly worked there does not make a difference as to whether he is eligible for benefits in that state. When it comes to unemployment insurance benefits, a claimant can file a claim in any state where they worked and earned insured wages. In this case, claimant worked and earned insured wages in **South Dakota** and is eligible to file a claim there. The administrative law judge can certainly understand why claimant would rather pursue PEUC benefits in Iowa, but the federal law is clear claimant must exhaust all available state benefits before he is eligible for federal benefits. Claimant's relief is to pursue his claim for regular unemployment insurance benefits in **South Dakota**.

DECISION:

The October 1, 2021, reference 02, decision is affirmed. Although the appeal in this case was deemed timely, the decision of the representative remains in effect as claimant appears to have been eligible to file for regular unemployment benefits in South Dakota.



Blair A. Bennett
Administrative Law Judge

January 28, 2022
Decision Dated and Mailed

bab/scn