

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

JESSICA L RUMMERY
Claimant

APPEAL 22A-UI-11365-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/15/20
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 May 4, 2022, Jessica L Rummery (claimant/appellant) filed an appeal from the decision dated February 23, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective November 1, 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 June 10, 2022. It was conducted with 22A-UI-11366-SN-T and 22A-UI-11367-SN-T. The parties were properly notified of the hearing. The Department did not participate in the hearing or submit any evidence. The claimant participated personally. Exhibits A, D-1 and D-2 were admitted into the record. Official notice was taken of the administrative record, including claimant’s wage history.

ISSUES:

- I. Is the appeal 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 5, 2020. Benefits were allowed and were paid out until they were exhausted in the week ending October 31, 2020. Because her regular unemployment insurance benefits were exhausted, Iowa then began issuing Pandemic Emergency Unemployment Compensation to claimant, beginning with the week ending November 7, 2020. These payments continued through the week ending February 20, 2021. On February 23, 2021, Iowa Workforce Development Department issued the decision appealed denying PEUC benefits effective November 1, 2020.

The following table displays the relevant base period for the original claim date of November 1, 2020:

	2019/3	2019/4	2020/1	2020/2	2020/3
Tri City Electric Co of Iowa	\$5828.00	\$7,949.00	\$11,718.00		\$7231.00
Reedcan LLC	\$ 233.00	\$ 110.00			

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,” effective November 1, 2020. There is no information in the record indicating what the eligibility requirements are in those states. The claimant said she worked for some employers in the state of Illinois in 2021. The administrative records IBIQ and SIDI reflect the claimant received \$6,233.00 in insured wages from Paynecrest Electric Inc. in the third quarter of 2021. These records show the claimant received \$435.60 in insured wages from Tri-City Electric Company of Iowa in the fourth quarter of 2020.

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

A disqualification decision was mailed to the claimant's address of record on February 23, 2021. The claimant did not receive the decision. (Exhibit D-1) The first notice of disqualification was the overpayment decisions dated April 26, 2022. These decisions stated the final date to appeal them was on May 6, 2022. The claimant filed her appeal on May 4, 2020 through Iowa Workforce Development Department’s online appeal portal. (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.

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.

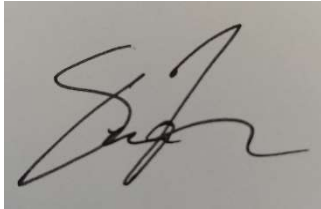
The U.S. Department of Labor has provided guidance on PEUC to state workforce agencies. This guidance provides in part that states "must verify that claimants have no entitlement to regular UC before processing the application for PEUC." It also provides that before accepting a PEUC claim "the state 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 almost four 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 records SID1 and IBIQ show the claimant had insured wages assigned to Illinois, but not during the relevant base period.

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 therefore concludes claimant is eligible for PEUC effective with benefit week ending November 1, 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 February 23, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective November 1, 2020 is REVERSED. The claimant is eligible for PEUC provided she is otherwise eligible. There is no resulting overpayment.



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

August 31, 2022
Decision Dated and Mailed

smn/kmj

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>.

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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.