

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT A WAGNER
Claimant

APPEAL 21A-UI-21504-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On September 28, 2021, claimant filed an appeal from the June 11, 2021 (reference 01) unemployment insurance decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective November 8, 2020. Claimant was properly notified of the hearing. Appeal number 21A-UI-21506-AR-T was heard together and created one record. A telephone hearing was held on November 23, 2021. Claimant participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant eligible for PEUC benefits in Iowa?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for regular unemployment insurance benefits in Iowa with an effective date of March 15, 2020. His eligibility was based on a base period that spanned from the fourth quarter of 2018 through the third quarter of 2019. Claimant exhausted his regular unemployment insurance benefits as of November 7, 2020.

After claimant exhausted benefits in Iowa, he filed a claim for benefits in Illinois. He thought this occurred in November 2020. The administrative record reflects that claimant was initially found to be eligible for unemployment insurance benefits in Illinois effective November 15, 2020. After claimant exhausted unemployment insurance benefits in Iowa, he was denied PEUC in Iowa because of his eligibility for benefits in Illinois.

An unemployment insurance decision was mailed to claimant's last known address of record on June 11, 2021. Claimant did not receive the decision at that time. He filed an appeal after he received a collections statement from Iowa Workforce Development regarding a separate overpayment issue. Claimant submitted his appeal on September 28, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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) 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 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. *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 appellant 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 promptly appealed the disqualification decision upon learning of it. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes:

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 administrative record reflects that claimant was monetarily eligible in Illinois after he exhausted his regular unemployment insurance benefits in Iowa. In order to be eligible for PEUC, a claimant cannot be eligible for regular unemployment benefits in any state. Because claimant is eligible for unemployment insurance benefits in Illinois, claimant does not meet the eligibility requirements for PEUC in Iowa. Accordingly, PEUC is denied effective November 8, 2020.

DECISION:

The June 11, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant's appeal is timely. Claimant is not eligible to receive PEUC benefits in Iowa effective November 8, 2020.



Alexis D. Rowe
Administrative Law Judge

December 30, 2021
Decision Dated and Mailed

ar/scn