

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LUIS F LOPEZ
Claimant

APPEAL NO. 22A-UI-07637-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On March 28, 2022, Luis Lopez (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated May 5, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective September 20, 2020 based on a finding that “all available information indicates [claimant] would be monetarily eligible for regular unemployment insurance benefits in the state of CA.”

Claimant requested an in person hearing. A notice of hearing was mailed to the party’s last known address of record on April 28, 2022 for an in-person hearing to be held May 17, 2022 at 1 p.m. at the IWD office in Sioux City, Iowa. Appeal Nos. 22A-UI-07637-AD and 22A-UI-07639-AD are related and were heard together at that time, forming a single hearing record. Claimant appeared and participated personally. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record, including claimant’s wage and payment history.

ISSUES:

Is the appeal timely?

Is Claimant eligible for Pandemic Emergency Unemployment Compensation (PEUC)?

FINDINGS OF FACT:

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

Claimant filed an original claim for unemployment insurance benefits with an effective date of March 22, 2020. Claimant exhausted his eligibility for unemployment insurance benefits funded by the State of Iowa in the benefit week ending September 19, 2020. Claimant automatically began receiving Pandemic Emergency Unemployment Compensation (PEUC) in the benefit week ending September 26, 2020 and continuing through November 7, 2020. The total amount of PEUC paid during this period was \$3,626.00.

Claimant's base period for an unemployment insurance benefit claim in California effective September 20, 2020 would be the second quarter of 2019 through the first quarter of 2020. Claimant credibly testified and the administrative law judge finds claimant did earn wages in California in the amount of approximately \$20,000.00 in the first quarter of 2020. Claimant also credibly testified and the administrative law judge finds that claimant did not earn wages in California in any other quarter. Claimant's available wage records for California do not go back that far for independent verification.

The Unemployment Insurance Decision was mailed to claimant at the above address on May 5, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 15, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

The delay in appealing was due to claimant not receiving the decision. Claimant was unaware that he was denied PEUC until he received a decision in March 2022 finding he was overpaid PEUC. Claimant promptly appealed the overpayment decision at that time. An appeal from the decision denying PEUC was set up at that time as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated May 5, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective September 20, 2020 is AFFIRMED.

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."

Claimant credibly testified that he never received the decision and the administrative law judge finds the same. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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.

Cal. Unemp. Ins. Code § 1281 provides in relevant part:

(a) An individual cannot establish a valid claim or a benefit year during which any benefits are payable unless during his or her base period, for new claims filed with an effective date beginning on or after January 1, 1992, he or she has met either of the following conditions:

(1) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than one thousand three hundred dollars (\$1,300).

(2) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than nine hundred dollars (\$900) and been paid wages for employment by employers during his or her base period equal to 1.25 times the amount he or she was paid in this same quarter.

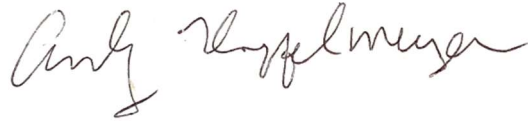
To be eligible for PEUC, a claimant must (1) have exhausted all rights to regular compensation under the State law or under Federal law with response to a benefit year and (2) have no rights to regular compensation under such law or any other State unemployment compensation law or to compensation under 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 evidence establishes claimant was eligible for regular compensation under the laws of the state of California effective September 20, 2020. This is because claimant was paid wages for employment by employers during the first quarter of 2020 in an amount not less than \$1,300.00. The administrative law judge therefore concludes claimant is ineligible for PEUC effective September 20, 2020, due to his not having exhausted his right to benefits elsewhere.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated May 5, 2021 (reference 01) that determined claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) effective September 20, 2020 is AFFIRMED.



Andrew B. Duffelmeyer
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May 23, 2022
Decision Dated and Mailed

abd/abd